

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 ANSWERING BRIEF AND
APPENDIX**

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Introduction

¶1 Since statehood, this Court has enforced our Constitution’s requirement that laws passed by the Legislature: (1) cover only one subject; and (2) give adequate notice of the bill’s contents in the title. The trial court correctly ruled that the Legislature disregarded these constitutional limits this legislative session.

¶2 First, the Legislature passed three bills (HB2898, SB1824, and SB1825) with titles claiming the acts relate to “budget reconciliation,” yet each bill includes substantive policy provisions unrelated to “budget reconciliation.” It also passed a bill (SB1819) with a title limited to “budget procedures,” but containing substantive statutes that have nothing to do with budget procedures.

¶3 Second, SB1819 covers a hodgepodge of unrelated subjects in violation of the single subject rule because they are precisely the type of “log-rolling” that important rule seeks to prevent. *Arizona Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 30 (2017).

¶4 The trial court’s judgment declaring these measures unconstitutional should be affirmed.

Statement of Facts & Statement of the Case

I. The Constitution's Title and Single Subject Requirements.

¶5 Article IV, part 2, § 13 of the Arizona Constitution provides that “every act” of the Legislature “shall embrace but one subject and matters properly connected therewith” (the single subject rule), “which subject shall be expressed in the title” (the title requirement).

¶6 The title requirement is intended to put legislators and the public on notice about what to expect in the act. *State v. Sutton*, 115 Ariz. 417, 419 (1977). For its part, the single subject rule is “intended to prevent the pernicious practice of ‘logrolling,’” where “an individual legislator ‘is thus forced, in order to secure the enactment of the proposition which he considers the most important, to vote for other of which he disapproves.’” *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 37 (2003) (citation omitted).

¶7 This legislative session, the Legislature passed several so-called “budget reconciliation” bills that violate these constitutional mandates.

II. “Budget Reconciliation” Bills.

¶8 The trial court [APP235] correctly examined what the Legislature itself recognizes as the intended and appropriate use of “budget reconciliation bills” (BRBs).

¶9 When the Legislature adopts a budget each year, the process involves a general appropriations bill, which sets forth the appropriations for the upcoming fiscal year. This general appropriations bill (known as the “feed bill”) is governed by Article IV, part 2, § 20, Ariz. Const., which mandates that “[t]he general appropriation bill shall embrace nothing but appropriations” and “[a]ll other appropriations shall be made by separate bills, each embracing but one subject.”

¶10 Thus, under our Constitution, any changes in the law necessary to carry out appropriations in the budget must be made in separate bills.

¶11 As the trial court found [APP235], the Legislature itself acknowledges that this is the appropriate function of the BRBs. Yet the Legislature passed various BRBs this session with provisions that have nothing to do with “effectuating the budget.” Rather, the Legislature crammed into BRBs laws prohibiting mask mandates and other COVID

mitigation measures, as well as many other pet policies of various legislators that have no connection to the budget. Even worse, lawmakers openly admitted that they traded votes on the budget to slip these policies into log-rolled budget bills. [APP46-48, 69-75]

III. The Challenged BRBs.

A. HB2898.

¶12 HB2898’s title is: “an act amending [listing around 100 statutes by number only]; appropriating monies; relating to kindergarten through grade twelve budget reconciliation.” Plaintiffs challenge Sections 12 (ban on COVID mitigation measures in public schools), 21 (ban on teaching certain curriculum), and 50 (authorizing lawsuits against public school employees for vaguely defined conduct). The trial court examined each of these provisions and held that none of them “remotely pertains to the budget or budget reconciliation.” [APP242]

B. SB1825.

¶13 SB1825’s title is “an act amending [listing around 12 statutes by number only]; appropriating monies; relating to budget reconciliation for higher education.” Plaintiffs challenge Section 2, which bans COVID mitigation measures in public universities and community colleges. The trial court explained that SB1825’s “title provides no notice that the bill

would prohibit universities and community colleges from requiring vaccinations and alternative COVID-19 mitigation measures.”

[APP242]

C. SB1824.

¶14 SB1824’s title is “an act amending [listing around 21 statutes by number only]; appropriating monies; relating to health budget reconciliation.” Plaintiffs challenge Sections 12 (restrictions on school vaccination requirements) and 13 (ban on vaccine “passports”). The trial court analyzed these provisions and held that “SB1824’s title provides no notice that the bill includes” these provisions. [APP243]

D. SB1819.

¶15 SB1819’s title is “an act amending [listing around 31 statutes by number only]; appropriating monies; relating to state budget procedures.” Plaintiffs challenge all of SB1819 on single subject grounds. On title grounds, Plaintiffs challenge Sections 4 (access to voter registration records), 5 (“fraud countermeasures” in paper ballots), 33 (Attorney General’s authority in election litigation), 35 (proof of citizenship on voter registration forms), 39 (ban on COVID mitigation measures), and 47 (“special committee” on the election “audit”). The trial

court held [APP244] that these “provisions have no relation to the budget and SB1819’s title does not provide any notice that they are included in the bill.” The trial court also rightly held that SB1819 covers “multiple, unrelated” subjects (ranging from dog racing permitting to newspapers) that neither “have any logical connection to each other nor ‘fall under some one general idea.’” [APP245]

¶16 In a well-reasoned order, the trial court invalidated the challenged provisions under HB2898, SB1824, and SB1825, and it invalidated all of SB1819.

Argument

I. The Challenged Bills Violate the Title Requirement.

¶17 Arizona courts have repeatedly struck down acts that violate the title requirement of Article IV, part 2, § 13. *E.g.*, *Sutton*, 115 Ariz. at 419; *White v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209 (1976). The title provision “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*, 113 Ariz. at 212. While the “act’s title need not be a synopsis or a complete index of the act’s provisions,” *Hoyle v. Superior Ct. In & For Cty. of Maricopa*, 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 211.¹ When part of an act is not properly 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.

¶18 Here, the challenged BRBs’ titles list various statutes being amended, and then declare that the bills/amendments are for “budget reconciliation.” For example, HB2898 lists over 100 statutes being amended, but specifies that the bill “relat[es] to kindergarten through grade twelve budget reconciliation.” This is crucial because, when 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; *Sutton*, 115 Ariz. at 419-20.

¹ The Legislature knows the title requirement in Section 13 applies to all legislation it passes, including BRBs. [See APP65]

By stating that the measures relate “to budget reconciliation,” the title “particularizes some of the changes to be made” and must “be limited to the matters specified.” Anything beyond that is “void.”

¶19 In similar circumstances, courts have struck down any provisions that are not set forth in the narrative description, even where specific statute numbers were referenced. In *Am. Est. Life Ins. Co. v. State, Dept. of Ins.*, for example, the title of the bill explicitly identified a series of statutes that would be amended, and also explained in narrative terms what the act addressed. 116 Ariz. 240, 242 (App. 1977). The narrative terms did not, however, describe a new tax that appeared in the act. The court of appeals held that a title may not “mislead” but must fairly “apprise legislators, and the public in general, of the subject matter of the legislation.” *Id.* The court rejected the State’s argument that the broad term “insurance” in the title was sufficient, and struck down the law because the title “fails to give adequate notice within the contents of the act that there is a new tax placed on ‘orphan premiums.’” *Id.* at 243; *see also Sutton*, 115 Ariz. at 419-20 (where title listed some changes to credit card theft statute but not others, provisions not referenced in title were void); *State Bd. of Control v. Buckstegge*, 18 Ariz. 277, 285 (1916)

(even giving liberal construction, title “should not be so meager as to mislead or tend to avert inquiry into the contents thereof”).

¶20 Does a bill titled “relating to state budget procedures” (SB1819) give notice that it includes substantive legislation covering everything from ballot requirements, to vaccine prohibitions, proof of citizenship, and the “audit?” Of course not. Yet that is exactly what SB1819 and the challenged provisions of the other BRBs do. Their titles give no notice that they would cover more than budget procedures or budget reconciliation. The bills’ titles misrepresent their contents.

¶21 *State ex rel. Conway v. Versluis*, 58 Ariz. 368, 377 (1941) doesn’t help the State. There, the title of the act stated that it dealt with the establishment of special funds for state trust lands and for the disposition of those funds. *Id.* at 373. This Court rejected a challenge to a provision that dealt with investment of those funds, because the title gave notice that the act included provisions about how the funds would be handled. Here, no reasonable person would expect that a ban on mask mandates, for example, would be in a bill dealing with “budget reconciliation.”

¶22 The trial court examined the titles the Legislature gave each of the challenged bills. It held that the “words ‘budget reconciliation’ appear in the title of each bill,” and “the Senate Fact Sheets expressly state that the purpose of the BRBs is to ‘[make] statutory and session law changes . . . to implement the FY 2022 state budget.’” [APP239]

¶23 The State asks the Court [at 8-9] to ignore the words “budget reconciliation” and rule that anything related to K-12 education should be encompassed within the title K-12 “budget reconciliation.” The trial court rejected this:

That is not correct. 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. . . . The Legislature cannot simply delete words from the title to justify non-budget reconciliation provisions. Nor can the Court. . . .

The State’s argument would render the concept of “budget reconciliation” meaningless. The *Litchfield* court warned that constitutional provisions should be interpreted liberally “but not so ‘foolishly liberal’ as to render the constitutional requirements nugatory.” In this case, the State’s view would allow the Legislature to re-define “budget reconciliation” to mean anything it chooses. Going forward, the Legislature could add any policy or regulatory provision to a BRB, regardless of whether the measure was necessary to implement the budget, without notice to the public. The State’s idea of “subject” is not and cannot be the law.

[APP240 (citations omitted)]

¶24 The trial court was right. “The courts cannot enlarge the scope of the title[.]” *White*, 113 Ariz. at 212 (quotation omitted). “The Constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so.” *Id.*

¶25 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.

¶26 The “single subject rule” provides that “[e]very act shall embrace but one subject and matters properly connected therewith.” Ariz. Const. art. IV, pt. 2, § 13. For purposes of this rule, 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) (“[A]ll matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane

to, one general subject.”).

¶27 Among many other subjects, SB1819 covers: dog racing permitting; voter registration; the definition of a “newspaper”; local authority to adopt COVID mitigation measures; the study committee on missing and indigenous peoples; a “special committee” to review the election “audit”; and requirements for terminating a condominium. [APP45-46, 96-97, 245-56]

¶28 It is hard to imagine a clearer violation of the single subject rule. The State concedes [at 10] that, to comply with the single subject rule, “each of the provisions of the bill [must] embrace the ‘one general subject’ and ‘one general idea’ of ‘budget procedures.’” The State then concludes – without explanation – that every provision of SB1819 meets this test. Nonsense. 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]²

² The State claims [at 8] that “no Arizona court has ever held that the individual provisions within a bill need to relate to each other.” Not true. *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*

¶29 Accepting the State’s argument would nullify the single subject rule. [APP240] The Legislature could pass one bill titled “Arizona law” that revokes all speed limits and guarantees the right to abortion. Even if both laws concern the subject of “Arizona law,” they aren’t germane to one general idea and aren’t related to each other. *See, e.g.,* Leshy, *The Arizona State Constitution* (2d ed. 2013) at 155 (“the adequate title requirement is independent of the one-subject principle[.]”) [APP213]

III. SB1819 Cannot Be Severed.

A. The trial court applied the proper remedy.

¶30 The trial court held that “[s]everability is not available as a remedy because there is no way for the Court to discern the dominant subject of” SB1819. [APP246] As the court of appeals held in *Litchfield* (which this Court has cited with approval, *Hoffman*, 245 Ariz. at 316 ¶ 14), when a bill contains multiple subjects, courts should not “speculate as to what might or might not have been in terms of the political process.” 125 Ariz. at 226. When a law “is infected by reason of the combination of

Hoffman v. Reagan, 245 Ariz. 313, 317 ¶ 16 (provisions must be “reasonably related”).

its various elements rather than by any invalidity of one component, the otherwise salutary principle of severance and partial savings of valid portions does not apply,” and “the entire act must fall.” *Id.*

¶31 The State misrepresents [at 14-15] the trial court’s statement that “budget reconciliation is the subject” of SB1819, suggesting that the trial found that “unchallenged” provisions in SB1819 all relate to the same subject and are “presumed” constitutional. To the contrary, the trial court held that “SB1819 consists of multiple, unrelated subjects,” [APP245 (listing eleven separate subjects as examples)] and “the array of provisions are in no way related to nor connected with each other or to an identifiable ‘budget procedure.’” [APP246]

¶32 The State also argues [at 15-16] that a bill is void as a whole only when its title lists multiple subjects. But the title and single subject requirements are distinct constitutional mandates. While an act’s title may help clarify the intended subject, the contents of an act must be reasonably related and germane to one subject. In *Litchfield*, for example, the act had a broad title “relating to State government.” But even though the bill’s provisions perhaps were related in some way to “State government,” the act was void because, like SB1819, its contents were a

“miscellany” of subjects with no “realistic commonality.” 125 Ariz. at 225. So too here. Because SB1819 “is classic logrolling – a medley of special interests cobbled together to force a vote for all or none,” “there is no way for the Court to discern the dominant subject of the act.” [APP246]

¶33 Finally, though this Court noted in *Clean Elections Inst., Inc. v. Brewer* that “if one portion of a statute violates the single subject rule, ‘only that part which is objectionable will be eliminated and the balance left intact,’” it did so in the context of describing Section 13’s language “direct[ing] that ‘if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.’” 209 Ariz. 241, 243 ¶ 5 (2004) (citing Ariz. Const. art. 4, pt. 2, § 13). Plaintiffs do not dispute that a bill’s provision not reflected in the title may be severed, as shown by their requested relief on their title claims. But SB1819 is a hodgepodge of subjects that cannot be severed.³

³ Plaintiffs also challenged all of SB1819 under Ariz. Const. art. IV, pt. 2, § 20, which requires that “appropriations shall be made by separate bills, each embracing but one subject.” [APP55] Because SB1819 contains appropriations (§§ 48-50) and covers multiple subjects, it also violates Section 20.

B. Plaintiffs challenged all of SB1819.

¶34 Contrary to the State’s claims [at 17-19], Plaintiffs challenged all of SB1819 under the single subject rule and offered several examples of unrelated provisions, beyond the six sections challenged solely on title grounds. [APP45-46, 55, 58, 96-98] Plaintiffs specifically argued that SB1819 contains “scores of completely unrelated provisions” and provided examples. [APP190]

¶35 In ruling on the single subject challenge, the trial court considered not just the six provisions challenged on title grounds, but the entire hodgepodge of laws that make up SB1819. [APP245-46] The State is simply wrong in suggesting [at 17] that there has been a waiver or other “conclusive” “presumption” that every provision relates to the “one general idea” of “budget procedures.”

¶36 The State goes even further [at 18] and claims that a “ cursory examination” of the “unchallenged” sections of SB1819 shows that “most” pertain to budget procedures. Not true. Out of the 52 sections of SB1819, the State identifies – for the first time on appeal – just a few that it now claims [at 18-19] relate to the budget (§§ 37 and 42) or to “budget procedures” (§§ 12-18). But this Court shouldn’t speculate about which

provisions would or wouldn't have passed but for the logrolling. In rejecting the State's severability argument, the trial thoroughly reviewed SB1819 and couldn't "discern the dominant subject[.]" [APP246] The trial court correctly held that the entire act fails.

IV. HB2898 Violates the Equal Protection Clause.

¶37 The Court also can affirm the trial court's ruling on HB2898 because it violates equal protection. Ariz. Const. art. II, § 13; *Forszt v. Rodriguez*, 212 Ariz. 263, 265 ¶ 9 (App. 2006) ("We may affirm the trial court's ruling if it is correct for any reason apparent in the record."). HB2898 bans public schools, but not private schools, from requiring masks to protect against the spread of COVID-19. Because this distinction interferes with only public school students' fundamental right to an education in a reasonably safe environment, it can be upheld only if it is necessary to serve a compelling state interest. The State cannot meet that burden.

¶38 To begin, the State is wrong when it argues [at 12] that education is not a "fundamental right" in Arizona. This Court has never overruled its holding that "the constitution does establish education as a fundamental right." *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973); *see also*

Magyar By & Through Magyar v. Tucson Unified Sch. Dist., 958 F. Supp. 1423, 1442 (D. Ariz. 1997) (education is a fundamental right in Arizona).

¶39 It is hard to imagine a more basic component of a student’s education than their physical safety at school. Contrary to the State’s argument [at 12] that the efficacy of school masking policies “is currently a question of great societal debate,” federal and state health experts all recommend the very safety precautions HB2898 forbids. [APP192, n.5] In fact, a recent CDC report found that, in Arizona’s two largest counties, “the odds of a school-associated COVID-19 outbreak were 3.5 times higher in schools with no mask requirement than in those with a mask requirement[.]” [APP230]

¶40 Even if education weren’t a fundamental right, HB2898’s distinction between public and private schools is irrational and arbitrary. The State’s half-hearted argument [at 13] that there are “existing statutory distinctions between public and private schools in a wide range of settings” ignores the context of HB2898, which interferes with public school students’ physical safety at school. None of the statutory examples the State provides deals with students’ safety. [APP179-80] The State also claims [at 12] that it has an interest in “protecting parental

autonomy” and “freedom of choice in education,” yet it offers no basis for distinguishing between public and private school parents’ “autonomy.”

¶41 In short, the State offers no governmental interest – let alone a compelling one – to justify HB2898’s distinction between the safety of children in public versus private schools.

V. Plaintiffs Have Standing.

¶42 The State concedes that Plaintiffs have standing to challenge HB2898, SB1824, and SB1825, but contends [at 4] that Plaintiffs lack standing to challenge SB1819 because they failed to “demonstrate a causal nexus between SB1819 or any individual provision thereof and any specific injury to themselves.” Wrong again.

¶43 As the trial court correctly held [APP236], a party challenging a statute on title grounds need not show “prejudice”; they need only “show that the title did not give adequate notice that the content of the act would impose [the challenged provision].” (citing *Am. Est.*, 116 Ariz. at 243). The State dismisses this finding in a footnote, claiming that “standing was not an issue” in that case. But as the trial court explained [APP236], “[a]lthough the court did not characterize the insurance companies’ argument as one of standing,” it rejected the argument “that

the insurance companies had to show prejudice, that is, injury caused by the defective title.”

¶44 Beyond that, the State ignores the trial court’s specific factual findings – citing multiple uncontested declarations – about Plaintiffs’ particularized injuries caused by SB1819. [APP237 (Plaintiffs “have alleged that SB1819 has and will directly affect them,” including “loss of resources (both financial and human resources) due to the Legislature’s failure to follow proper legislative process in enacting SB1819,” deprivation “of the ability to participate in the legislative process,” and the increased “risk that their children (and the children of persons they represent) will contract the virus” from SB1819’s “ban[on] localities from adopting COVID-19 mitigation measures that impact schools”)]⁴ The trial court’s factual findings are owed deference unless clearly erroneous. *E.g., In re U.S. Currency in Amount of \$26,980.00*, 199 Ariz. 291, 295 ¶ 9 (App. 2000). Plaintiffs have standing.

⁴ SB1819 also frustrates AZAN’s mission and caused it to divert resources to combat the harmful voting policies. [APP165-66]

VI. Plaintiffs' Claims Are Justiciable.

¶45 The State next argues [at 4-7] that whether the BRBs violate Section 13 is a non-justiciable “political question.” Not so. Non-justiciable political questions “involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution according to discoverable and manageable standards.” *Forty-Seventh Leg. of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 7 (2006). Neither issue is present here.

¶46 First, Plaintiffs' claims do not involve decisions solely committed to the Legislature. Whether to enact policy is a political question. But whether the Legislature complied with constitutional mandates when passing that legislation isn't. 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.” *Id.* ¶ 8.

¶47 The State posits [at 5] that “whether the Legislature should include particular items in a budget or enact particular legislation . . . clearly are political questions.” (quoting *Brewer v. Burns*, 222 Ariz. 234, 239 ¶ 21 (2009)). But Plaintiffs' claims don't turn on whether the

Legislature should or shouldn't fund state programs in the budget, or the wisdom of a mask mandate prohibition. Indeed, in deciding whether the challenged provisions are adequately reflected in the bills' titles, it is irrelevant that the challenged provisions are bad policy. [APP238] The State claims [at 5-6] that questions of "what subject is embraced in the title of a BRB and are the provisions contained therein germane to that subject" are justiciable, yet argues that whether BRB provisions effectuate the budget is non-justiciable. Those positions can't be reconciled. If the Legislature titles a bill "budget reconciliation," then deciding whether the bill's contents are adequately noticed in the title necessarily requires a determination whether they, in fact, effectuate the budget.

¶48 If the State had its way, the Legislature could pass any unrelated laws through a BRB and insulate itself from judicial review because "budget reconciliation" is a magic term that only the Legislature can interpret. That's not how our system of checks and balances works. "Although the legislature has broad fiscal powers," those powers are subject to constitutional limitations that courts can enforce. *See, e.g., Indus. Comm'n of Ariz. v. Brewer*, 231 Ariz. 46, 50 ¶ 14 (App. 2012); *Ariz.*

Ass'n of Providers for Persons with Disabilities v. State, 223 Ariz. 6, 14 ¶¶ 24-25 (App. 2009) (rejecting argument that courts lack power to review Legislature's budgeting decisions). Determining whether legislation is logically connected to "budget reconciliation" is no different from determining whether an act constituted an "item of appropriation of money" under our Constitution in *Forty-Seventh Leg.*, 213 Ariz. at 485 ¶ 7. There, as here, "[t]he political question doctrine . . . provides no basis for judicial abstention[.]" *Id.*

¶49 Second, Plaintiffs aren't asking the Court to break new ground. Arizona courts have been applying the constitution's title and single subject requirements since statehood. "[W]ell-established legal principles exist to guide" the Court in deciding whether the Legislature met its constitutional requirements under article IV, part 2, § 13. *Ariz. Indep. Redistricting Comm'n v. Brewer*, 229 Ariz. 347, 354 ¶ 30 (2012); [see ¶¶ 17-29 above]. At bottom, determining the Legislature's compliance with the title and single-subject requirements falls squarely within this Court's powers.

VII. The Court Should Reject the State’s Request for Prospective-Only Application.

¶50 Last, the State [at 19-21] urges this Court to let these constitutional violations slide and apply its ruling prospectively only. The State’s argument lacks merit.

¶51 In the rare case when this Court applies its decision prospectively only, it considers: (1) whether its opinion overturns settled precedent or decides a new issue “whose resolution was not foreshadowed”; (2) whether “retroactive application will further or retard operation of the rule” and its purpose, and (3) “[w]hether retroactive application will produce substantially inequitable results.” *Fain Land & Cattle Co. v. Hassell*, 163 Ariz. 587, 596-97 (1990). None of these factors favors a prospective-only application.

¶52 Plaintiffs are not seeking to establish a new legal principle. The Constitution itself says that the title and single subject requirements apply to “every act.” There has never been an exception for BRBs. To the contrary, this Court gave the Legislature fair warning in *Bennett* that Section 13 applies to BRBs. Far from “refus[ing] to address the application of the single subject rule to ORBs” [OB at 20], this Court directly foreshadowed application of the rule to BRBs. 206 Ariz. at 528 ¶

36 nn. 8, 9. Unlike the “widely misunderstood” gift clause jurisprudence the Court clarified in *Turken v. Gordon*, and the “multiple transactions” entered into relying on a prior test, 223 Ariz. 342, 351, 352 ¶¶ 45, 49 (2010), the Legislature here didn’t rely on unsettled or conflicting law. Section 13 has applied to “every act” since statehood.

¶53 Applying Section 13 to the BRBs at hand also furthers the rule’s purpose by invalidating logrolled provisions and deterring future violations. The State claims [at 21] that affirming the trial court would invalidate “potentially scores of BRBs and ORBs passed in the last several decades.” But the Court need only apply the single subject and title requirements to the challenged BRBs. And the State cannot credibly argue that the Legislature didn’t know Section 13 applies. As the trial court put it [APP247], “the requirements of Section 13 apply to every act of the Legislature. This is not new law. The Arizona Supreme Court has repeatedly recognized and enforced Section 13’s constitutional requirements. The BRBs are not exempt from these requirements.” All told, the Legislature knows the rules; it just chose to ignore them.

Notice Under Rule 21(a)

¶54 Plaintiffs request their attorneys' fees under the private attorney general doctrine and their costs under A.R.S. §§ 12-341 and 12-342.

Conclusion

¶55 Our Constitution means what it says. This Court should affirm.

RESPECTFULLY SUBMITTED this 12th day of October, 2021.

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11 **ARIZONA SUPERIOR COURT**

12 **MARICOPA COUNTY**

13 ARIZONA SCHOOL BOARDS) No. **CV2021-012741**
ASSOCIATION, INC., an Arizona nonprofit)
14 corporation; CHILDREN'S ACTION)
ALLIANCE, INC., an Arizona nonprofit) **COMPLAINT FOR DECLARATORY**
15 corporation; ARIZONA EDUCATION) **AND INJUNCTIVE RELIEF**
ASSOCIATION, an Arizona nonprofit)
16 corporation; ARIZONA ADVOCACY) (Tier 2)
17 NETWORK, an Arizona nonprofit corporation;)
STEVE GALLARDO, an Arizona resident;) (Expedited Consideration Requested)
18 LELA ALSTON, an Arizona resident; DAVID)
19 LUJAN, an Arizona resident; BETH LEWIS,)
20 an Arizona resident; RAQUEL MAMANI, an)
Arizona resident; JUSTIN MONNET, an)
21 Arizona resident; CORINA ONTIVEROS, an)
Arizona resident; MARY CATHERINE)
22 HARREL, M.D., an Arizona resident; RUTH)
23 FRANKS SNEDECOR, M.D., an Arizona)
resident, SHARON KIRSCH, an Arizona)
24 resident; RICHARD NEWHAUSER, an)
25 Arizona resident)
26)

1 v.)
 2 STATE OF ARIZONA, a body politic,)
 3 Defendant.)
 4 _____)

5 Plaintiffs, for their Complaint against Defendant, allege as follows:

6 **Overview**

7 1. This is an action seeking to enjoin unconstitutional legislation that undermines our
 8 representative democracy, and to uphold the fundamental right of Arizona’s public
 9 schoolchildren.

10 2. Article IV, part 2, section 13 of the Arizona Constitution places two important
 11 limitations on laws passed the Legislature: (1) the laws can cover only one subject, and (2) their
 12 contents must be properly noticed in the title of the bill.

13 3. This legislative session, the Legislature passed several so-called “budget
 14 reconciliation bills” that violate these constitutional mandates.

15 4. They passed three bills (HB 2898, SB 1824, and SB 1825) with titles claiming that
 16 the contents of the act relate to health or education “budget reconciliation,” yet the contents of
 17 each bill include substantive policy provisions that have nothing to do with the budget.

18 5. The Legislature also passed a bill (SB 1819) with a title claiming that its contents
 19 relate to “budget procedures” and “budget reconciliation,” but it likewise includes substantive
 20 policy legislation that has nothing to do with the budget. Beyond that, SB 1819 covers a
 21 hodgepodge of completely unrelated subjects in violation of the single subject rule.

22 6. The kindergarten through grade twelve budget reconciliation bill (HB 2898) also
 23 violates Arizona’s equal protection clause under Article II, section 13 of the Arizona
 24 Constitution.

25 7. HB 2898 bans all public and charter schools – but not private schools – from
 26 requiring students and staff to wear masks in school to protect against the spread of COVID-19.

1 The Legislature passed this bill in the face of a public health crisis, when the COVID-19 virus
2 is mutating and spreading rapidly across the country and this state, including among children.

3 8. This legislation unfairly discriminates against Arizona’s public and charter school
4 students as compared to their private school peers regarding their right to a safe education, a
5 fundamental right under Arizona law.

6 **Parties, Jurisdiction and Venue**

7 9. Plaintiff Arizona School Boards Association, Inc. (“ASBA”) is an Arizona non-
8 profit corporation dedicated to cultivating excellence in locally governed school districts to help
9 provide the best schools in every Arizona community. ASBA provides training, leadership, and
10 essential services to its members. Protection of local decision-making regarding education
11 decisions, along with enabling schools to provide reasonably safe environments for children and
12 school employees is paramount to ASBA’s mission. ASBA has diverted significant time and
13 resources to addressing the unconstitutional provisions the Legislature improperly included in
14 “budget reconciliation bills” this session, which provisions are the subject of this action. ASBA
15 has diverted resources including communicating to its members and organizing grassroots
16 opposition, conveying the legislation’s requirements to its membership through multiple
17 platforms, writing model policy for districts to consider to address the legislation’s contents, and
18 seeking legal advice regarding the requirements of the law.

19 10. ASBA’s members include nearly all of the school districts in the state represented
20 through their governing boards and individual members of school district governing boards.
21 ASBA has a keen interest in empowering its members to make decisions that are in the best
22 interests of their students and staff, including their safety. Its members’ efforts to provide a
23 quality public education in a reasonably safe environment for its employees and the children
24 whose safety it is their job to protect have been impeded and will be impeded by the illegal and
25 unconstitutional laws that are the subject of this challenge.

26 11. Plaintiff Children’s Action Alliance, Inc. (“CAA”) is an Arizona non-profit

1 corporation dedicated to identifying and eliminating barriers to the well-being of children and
2 families. CAA is an independent voice for children and families in the community and at the
3 state capitol to create opportunities through partnerships and policy solutions. CAA’s vision is
4 an Arizona where all children and families thrive. Protection of the health and safety of
5 Arizona’s children is a core mission of CAA.

6 12. CAA spends about eighty percent of its organizational workload focusing on
7 policies at the state level enacted by the state Legislature. It has fifteen full-time policy and
8 communications experts who work on a wide range of issues, including education from early
9 childhood, to kindergarten through grade twelve, to higher education. The manner in which
10 many of the provisions were enacted in budget reconciliation bills this legislative session
11 prevented CAA from doing the usual type of advocacy work that it normally employs to express
12 the public’s opposition to legislative policies through proper legislative channels. The passage
13 of bills discussed below as part of the “budget reconciliation process” deprived CAA of the
14 ability to provide proper advocacy regarding the bills that are the subjects of this action.

15 13. Plaintiff Arizona Education Association (“AEA”) is an Arizona non-profit
16 corporation, and a professional association and a labor union advocating on behalf of students,
17 staff, and teachers in Arizona. AEA has more than 20,000 members consisting of Arizona
18 students, educators, workers, and allies, and it has a mission of promoting quality public
19 education in our state. AEA has diverted significant time and resources in response to the bills
20 that were unconstitutionally enacted within “budget reconciliation bills” that are the subject of
21 this action. AEA’s has been forced to divert its resources including communicating to its
22 members and organizing grassroots opposition, conveying the legislation’s requirements to its
23 membership, responding to its members who are trying to determine how to protect the
24 children’s safety as well as their own, and seeking legal advice regarding the requirements of the
25 law.

26 14. AEA members’ working conditions and ability to provide an appropriate and

1 adequate education in a reasonably safe environment are being and will be impeded by
2 unconstitutional laws that are the subject of this action. The ability of teachers to teach
3 appropriate curriculum without threat of penalties that chill their ability to convey information
4 is also part of the core mission of the AEA. AEA has had to divert considerable resources in
5 responding to members' concerns about section 21 of House Bill 2898, which was
6 unconstitutionally included in a budget reconciliation bill.

7 15. Plaintiff Arizona Advocacy Network ("AZAN") is an Arizona non-profit
8 corporation dedicated to defending and deepening Arizona's commitment to democracy. AZAN
9 believes the cornerstones of such a democracy are meaningful voting rights and access to the
10 ballot, political decisions driven by voters instead of money, and a fair and independent judiciary
11 and adherence to the Arizona Constitution. AZAN's mission, including allowing citizen
12 participation in the legislative process, is frustrated by the legislature's conduct of improperly
13 including various provisions in the budget reconciliation bills in violation of the constitution as
14 explained in this complaint. AZAN is committed to preserving a truly representative political
15 system in which all Arizonans make their voices heard. Ensuring Arizonans' right to vote and
16 sanctity and privacy of its voter information is a core mission of AZAN.

17 16. AZAN has diverted significant time and resources analyzing the impact of various
18 election-related provisions in the budget reconciliation bills this legislative session. This
19 legislative session, two full time staff were devoted to jointly working with coalition partners to
20 block legislative attacks on voting rights and democracy through advocacy, education, and
21 organizing. AZAN's ability to advocate for and defend a truly representative political system
22 was impeded, however, by the policies passed through budget reconciliation bills this session as
23 part of larger effort by the legislative majorities to undermine Arizona's democracy.

24 17. Plaintiff Steve Gallardo is an individual residing in Maricopa County, Arizona, a
25 member of the Maricopa County Board of Supervisors, and a member of the Phoenix Union
26 High School Governing Board. Supervisor Gallardo brings this lawsuit his individual capacity.

1 18. Plaintiff Gallardo strives to protect the health and safety of the children who are
2 entrusted to his district, as well as the faculty and staff of the district’s employees. The Phoenix
3 Union High School Governing Board has implemented a policy requiring masks. The
4 unconstitutionally adopted statutes that are the subject of this case threaten his ability to work to
5 protect his district’s students and staff when the budget reconciliation bills go into effect on
6 September 29, 2021. The unconstitutionally adopted statutes that are the subject of this case
7 threaten Plaintiff Gallardo’s ability to exercise local control to protect the health and safety of
8 his community.

9 19. Plaintiff Lela Alston is an individual residing in Maricopa County, Arizona, a
10 member of the Arizona State Senate, and the President of the Phoenix Union High School
11 Governing Board. Senator Alston brings this lawsuit in her individual capacity.

12 20. Plaintiff Alston strives to protect the health and safety of the children who are
13 entrusted to her district, as well as the faculty and staff of the district’s employees. The Phoenix
14 Union High School Governing Board has implemented a policy requiring masks. The
15 unconstitutionally adopted statutes that are the subject of this case threaten her ability to work to
16 protect her district’s students and staff when the budget reconciliation bills go into effect on
17 September 29, 2021.

18 21. Plaintiff David Lujan is an individual residing in Maricopa County, Arizona, the
19 President and CEO of CAA, and a former Arizona legislator. Mr. Lujan has worked in public
20 policy in Arizona for 20 years, and he is committed to advocating for the well-being of children,
21 including in their educational environment. Mr. Lujan’s ability to advocate for policies this
22 legislative session was impeded by the unconstitutional manner in which the Legislature passed
23 policies through budget reconciliation bills.

24 22. Plaintiff Beth Lewis is an individual residing in Maricopa County, Arizona. Ms.
25 Lewis is a public school teacher in the Tempe Elementary School District and the parent of minor
26 children who attend public schools that “encourage” but do not mandate masks. Ms. Lewis’s

1 children are under the age of 12 and not yet eligible to receive the COVID-19 vaccine. Ms.
2 Lewis's ability to work in a reasonably safe environment and to have her minor children attend
3 school in a reasonably safe environment is being impeded and threatened by the unconstitutional
4 laws that are the subject of this action.

5 23. Plaintiff Raquel Mamani is an individual residing in Maricopa County, Arizona.
6 Ms. Mamani is a substitute teacher in the Madison Elementary School District and the parent of
7 minor children who attend public schools that currently mandate masks. Ms. Mamani's children
8 are under the age of 12 and not yet eligible to receive the COVID-19 vaccine. Ms. Mamani's
9 ability to work in a reasonably safe environment and to have her minor children attend school in
10 a reasonably safe environment is being impeded and threatened by the unconstitutional laws that
11 are the subject of this action.

12 24. Plaintiff Justin Monnet is an individual residing in Maricopa County, Arizona and
13 the parent of four minor children who attend public school. Mr. Monnet's youngest child, who
14 is in kindergarten, is immunocompromised and at a higher risk for severe illness if he contracts
15 COVID-19. Mr. Monnet's ability to have his minor children attend school in a reasonably safe
16 environment is being impeded and threatened by the unconstitutional laws that are the subject
17 of this action.

18 25. Plaintiff Corina Ontiveros is an individual residing in Pima County, Arizona and
19 a teacher in the Tucson Unified School District. The Tucson Unified School District currently
20 has a mask mandate for staff. Ms. Ontiveros teaches language arts and social studies and is
21 currently assigned as a third grade substitute teacher, and she is the parent of minor children who
22 attend public school. She is highly trained and experienced in culturally responsive curriculum,
23 an approach that makes teachers aware of their own centeredness, biases, and perspectives, and
24 centers the students' cultures and identities in classroom lessons and discussions. Her ability to
25 provide instruction will be chilled by the vague and otherwise improper provisions of a provision
26 of that was improperly included in the budget reconciliation process, as discussed further below.

1 Ms. Ontiveros’s ability to work in a reasonably safe environment and to have her minor children
2 attend school in a reasonably safe environment is being impeded and threatened by the
3 unconstitutional laws that are the subject of this action.

4 26. Plaintiff Mary Catherine “Cadey” Harrel, MD is an individual residing in Pima
5 County, Arizona and a family medicine physician who has dedicated her career to maternal and
6 child health and reducing health disparities. Dr. Harrel is also the parent to minor children who
7 attend public school in Arizona. Dr. Harrel recently unenrolled her children who are students
8 from a school that did not require masks because she was concerned about their safety, and
9 enrolled them in a school that currently has a mask mandate. Dr. Harrel’s ability to have her
10 minor children attend school in a reasonably safe environment is being impeded and threatened
11 by the unconstitutional laws that are the subject of this action.

12 27. Plaintiff Ruth Franks Snedecor, MD is an individual residing in Maricopa County,
13 Arizona, and a physician who cares for hospitalized patients. Throughout the COVID-19
14 pandemic, Dr. Franks has advised a public school district about the reopening of schools and
15 COVID-19 mitigation measures. Dr. Franks has three children who attend public schools, two
16 who are under the age of 12 and not yet eligible to receive the COVID-19 vaccine, and one who
17 is vaccinated. Dr. Franks’s ability to have her minor children attend school in a reasonably safe
18 environment is being impeded and threatened by the unconstitutional laws that are the subject
19 of this action.

20 28. Plaintiff Sharon Kirsch is an individual residing in Maricopa County, Arizona who
21 teaches English and Rhetorical Studies at Arizona State University. Professor Kirsch teaches in-
22 person classes at ASU where students engage in interactive discussions in small classrooms.
23 Professor Kirsch’s ability to work in a reasonably safe environment is being impeded and
24 threatened by the unconstitutional laws that are the subject of this action.

25 29. Plaintiff Richard Newhauser is an individual residing in Maricopa County,
26 Arizona who teaches English at Arizona State University. Professor Newhauser is at a higher

1 risk for severe illness if he contracts COVID-19 because of his age and an underlying medical
2 condition. Professor Newhauser’s ability to work in a reasonably safe environment is being
3 impeded and threatened by the unconstitutional laws that are the subject of this action.

4 30. Plaintiffs all have an interest in ensuring that the Legislature complies with its
5 constitutional obligations and that Arizonans are safe in their educational and work
6 environments.

7 31. Defendant State of Arizona is a body politic.

8 32. Jurisdiction over this action is proper pursuant to A.R.S. §§ 12-123, 12-1831, and
9 the Arizona Constitution.

10 33. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

11 **Factual Allegations**

12 **The Single Subject and Title Requirements in Ariz. Const. art. IV, pt. 2 § 13**

13 34. Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed
14 by the Legislature “shall embrace but one subject and matters properly connected therewith,
15 which subject shall be expressed in the title; but if any subject shall be embraced in an act which
16 shall not be expressed in the title, such act shall be void only as to so much thereof as shall not
17 be embraced in the title.”

18 35. Section 13 has two distinct constitutional mandates: (1) legislation may only
19 embrace one subject, known as the “single subject rule,” and (2) the subject of the legislation
20 must be properly addressed in the title of the act.

21 36. The title requirement in Section 13 “was designed to enable legislators and the
22 public upon reading the title to know what to expect in the body of the act so that no one would
23 be surprised as to the subjects dealt with by the act.” *State v. Sutton*, 115 Ariz. 417, 419 (1977)
24 (quotation omitted).

25 37. The “act’s title need not be a synopsis or a complete index of the act’s provisions,”
26 *Hoyle v. Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App. 1989), but the “title

1 must be worded so that it puts people on notice as to the contents of the act,” *Sutton*, 115 Ariz.
2 at 419.

3 38. When the title of an amendatory act “particularizes some of the changes to be made
4 by the amendment, the legislation is limited to the matters specified and anything beyond them
5 is void, however germane it may be to the subject of the original act.” *Hoyle*, 161 Ariz. at 230.

6 39. When a component of an act is not properly reflected in the title, the act is “void
7 only as to so much thereof as shall not be embraced in the title.” Ariz. Const. art. IV, pt. 2, § 13.

8 40. For its part, the single subject rule is “aimed at the practice of ‘logrolling’, or the
9 combining of disparate minorities into a majority through a combination of unrelated legislative
10 goals in a single bill,” and it is “designed to prevent the evils of omnibus bills, surreptitious and
11 ‘hodgepodge’ legislation.” *Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt*,
12 125 Ariz. 215, 223–24 (App. 1980).

13 41. “A bill that deals with multiple subjects creates a serious ‘logrolling’ problem
14 because an individual legislator is thus forced, in order to secure the enactment of the proposition
15 which he considers the most important, to vote for others of which he disapproves.” *Bennett v.*
16 *Napolitano*, 206 Ariz. 520, 528 ¶ 37 (2003) (quotations and citations omitted).

17 42. The “subject” of legislation includes “all matters having a logical or natural
18 connection.” *Litchfield Elementary*, 125 Ariz. at 224 (citation omitted). Thus, to comply with
19 the single subject rule, “all matters treated of should fall under some one general idea, be so
20 connected with or related to each other, either logically or in popular understanding, as to be
21 parts of, or germane to, one general subject.” *Id.*

22 43. When a bill violates the single subject rule, it is “infected by reason of the
23 combination of its various elements rather than by any invalidity of one component,” so “the
24 entire act must fall.” *Id.* at 226.

25 44. While the single subject rule and title requirement under Section 13 are
26 “interpreted liberally so as not to impede or embarrass the legislature in its business,” they

1 shouldn't be interpreted "so foolishly liberal as to render the constitutional requirements
2 nugatory." *Id.* at 224 (quotations omitted).

3 45. These constitutional requirements are critical to a representative democracy. They
4 ensure that, to pass substantive policy, legislators must gather enough votes from representatives
5 of the majority of constituents who support the policy – not slip them into omnibus budget bills.

6 **The Legislature's "Budget Reconciliation" Bills**

7 46. Each legislative session, the Legislature often passes budget reconciliation bills
8 ("BRBs") to effectuate the state's budget set forth in separate appropriations bills.

9 47. According to the Legislative Council's Arizona Legislative Manual, BRBs "are
10 used for statutory adjustments that must be implemented to carry out the adopted budget." Ariz.
11 Leg. Council, Ariz. Legislative Manual (2003),
12 <https://www.azleg.gov/alispdfs/Council/legman2003.pdf> (last visited August 9, 2021). A true
13 and correct excerpt is attached as "Exhibit A."

14 48. The Legislature is well-aware that the title requirement in Section 13 applies to all
15 legislation it passes, including BRBs. *See* 2020 Bill Drafting Manual at 9,
16 https://www.azleg.gov/alispdfs/council/2021-2022_bill_drafting_manual.pdf ("A title is a
17 constitutional requirement of every bill and has a significant legal effect. The Arizona Supreme
18 Court has ruled that the title need not be a complete description or index of the substantive law
19 in the bill, but it may not be deceptive or misleading. While the title need not be a synopsis of
20 the bill's contents, it must state the subject of the legislation with sufficient clarity to enable
21 persons reading the title to know what to expect in the body of the act."). A true and correct
22 excerpt is attached as "Exhibit B."

23 49. The Legislature's Bill Drafting Manual also makes clear that the words "relating
24 to" in an act's title "should be a single phrase containing a general statement of the single subject
25 of the bill." *Id.* at 10.

26 50. Despite these constitutional mandates, the Legislature passed – and the Governor

1 signed – a number of so-called BRBs this legislative session (detailed below) that clearly and
2 unconstitutionally erode the legislative process and procedures.

3 **HB 2898 (kindergarten through grade twelve budget reconciliation)**

4 51. HB 2898’s title is:

5 AN ACT AMENDING SECTIONS 5-568, 15-119, 15-181 AND 15-185,
6 ARIZONA REVISED STATUTES; AMENDING SECTION 15-203, ARIZONA
7 REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2,
8 SECTION 2; AMENDING SECTIONS 15-213.01 AND 15-213.03, ARIZONA
9 REVISED STATUTES; REPEALING SECTION 15-240, ARIZONA REVISED
10 STATUTES; AMENDING SECTION 15-251, ARIZONA REVISED
11 STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 3;
12 AMENDING SECTIONS 15-341 AND 15-342, ARIZONA REVISED
13 STATUTES; AMENDING TITLE 15, CHAPTER 3, ARTICLE 3, ARIZONA
14 REVISED STATUTES, BY ADDING SECTION 15-342.05; AMENDING
15 SECTION 15-350, ARIZONA REVISED STATUTES, AS AMENDED BY
16 LAWS 2021, CHAPTER 2, SECTION 4; AMENDING SECTIONS 15-393, 15-
17 393.01, 15-481 AND 15-491, ARIZONA REVISED STATUTES; AMENDING
18 SECTION 15-505, ARIZONA REVISED STATUTES, AS ADDED BY LAWS
19 2021, CHAPTER 2, SECTION 5; AMENDING SECTION 15-512, ARIZONA
20 REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2,
21 SECTION 6; AMENDING SECTION 15-514, ARIZONA REVISED
22 STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 7;
23 AMENDING TITLE 15, CHAPTER 7, ARTICLE 1, ARIZONA REVISED
24 STATUTES, BY ADDING SECTIONS 15-711.01 AND 15-717.02;
25 AMENDING SECTION 15-746, ARIZONA REVISED STATUTES;
26 AMENDING TITLE 15, CHAPTER 7, ARTICLE 3, ARIZONA REVISED
STATUTES, BY ADDING SECTION 15-747; AMENDING SECTIONS 15-774,
15-816, 15-816.01 AND 15-901, ARIZONA REVISED STATUTES;
AMENDING SECTION 15-901.08, ARIZONA REVISED STATUTES, AS
ADDED BY LAWS 2021, CHAPTER 299, SECTION 4; AMENDING
SECTIONS 15-907 AND 15-911, ARIZONA REVISED STATUTES;
AMENDING TITLE 15, CHAPTER 9, ARTICLE 2, ARIZONA REVISED
STATUTES, BY ADDING SECTION 15-924; AMENDING SECTIONS 15-943,
15-945, 15-964, 15-973, 15-995, 15-996, 15-1021, 15-1043 AND 15-1107,
ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 10,
ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13; AMENDING
TITLE 15, CHAPTER 10.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 15-1286; AMENDING SECTION 15-1304, ARIZONA
REVISED STATUTES; REPEALING SECTION 15-2003, ARIZONA

1 REVISED STATUTES; PROVIDING FOR TRANSFERRING AND
2 RENUMBERING; AMENDING SECTIONS 15-2401, 15-2402, 15-2403, 35-
3 185.01, 35-212, 35-313, 37-221, 37-521, 41-1092.02, 41-1276, 41-1750, 41-2632,
4 41-3022.18 AND 41-3026.01, ARIZONA REVISED STATUTES; AMENDING
5 TITLE 41, CHAPTER 56, ARTICLE 1, ARIZONA REVISED STATUTES, AS
6 TRANSFERRED AND RENUMBERED, BY ADDING SECTIONS 41-5701
7 AND 41-5701.01; AMENDING SECTIONS 41-5701.02, 41-5702, 41-5703, 41-
8 5704, 41-5705, 41-5711, 41-5721, 41-5731, 41-5741, 41-5751, 41-5752, 41-5753,
9 41-5754, 41-5755, 41-5757, 41-5758, 41-5759, 41-5760, 41-5761, 41-5763, 41-
10 5764, 41-5781, 41-5782, 41-5783, 41-5784, 41-5785, 41-5787, 41-5788, 41-5789,
11 41-5790, 41-5791, 41-5793, 41-5794, 41-5805, 41-5810, 41-5832, 41-5841, 41-
12 5851, 41-5853, 41-5854, 41-5857 AND 41-5858, ARIZONA REVISED
13 STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING
14 SECTIONS 42-5030.01 AND 43-1089.02, ARIZONA REVISED STATUTES;
15 AMENDING LAWS 2020, CHAPTER 26, SECTION 1; **APPROPRIATING
16 MONIES; RELATING TO KINDERGARTEN THROUGH GRADE
17 TWELVE BUDGET RECONCILIATION.**

18 (Emphasis added).

19 52. Despite the title limiting the scope of the act’s contents to provisions “relating to
20 kindergarten through grade twelve budget reconciliation,” HB 2898 includes substantive policies
21 that have nothing to do with the budget.

22 53. First, Section 12 prohibits a “a county, city, town, school district governing board
23 or charter school governing body” from “requir[ing] the use of face coverings by students or
24 staff,” and prohibits school districts and charter schools from “requir[ing] a student or teacher to
25 receive a vaccine for COVID-19 or to wear a face covering to participate in in-person
26 instruction.”

54. Section 12 applies to students in public and charter schools, but not students in
private schools.

55. The Legislature also curiously included a retroactivity provision in Section 118,
stating that Section 12 “applies retroactively to from and after June 30, 2021.” The Arizona
Constitution provides that any legislation does not become effective until 90 days after the close

1 of the legislative session. The effective date for legislation passed this past legislative session is
2 September 29, 2021. The Constitution provides the only means by which the Legislature can
3 make laws immediately effective. Ariz. Const. art. IV, pt. 1 § 1(3). Specifically, to do so requires
4 an emergency clause and passage by a two-thirds super majority. Indeed, the Senate fact sheet
5 for HB 2898 states, “the Arizona Constitution provides that [BRBs] become effective on the
6 general effective date, unless an emergency clause is enacted.” HB 2898 Senate Fact Sheet, 55th
7 Leg., 1st Reg. Sess. (Ariz. June 30, 2021)
8 https://www.azleg.gov/legtext/55leg/1R/summary/S.2898APPROP_ASPASSED_COW.pdf.

9 (Ex. C) HB 2898 includes no emergency provision and was passed by a bare majority in each
10 house.

11 56. Second, Section 21 prohibits “a teacher, administrator or other employee of a
12 school district, charter school or state agency who is involved with students and teachers in
13 grades preschool through the twelfth grade” from teaching curriculum “that presents any form
14 of blame or judgment on the basis of race, ethnicity or sex.”

15 57. Section 21 goes on to prohibit various vague “concepts” from being taught to
16 public and charter school students, including the idea that an individual “should feel discomfort,
17 guilt, anguish, or any other form of psychological distress because of the individual’s race,
18 ethnicity or sex,” or that “academic achievement, meritocracy or traits such as hard work ethic
19 are racist or sexist or were created . . . to oppress members or another race, ethnic group or sex.”

20 58. What’s more, Section 21 authorizes the State Board of Education to take
21 “disciplinary action” against a teacher who violates this section, “including the suspension or
22 revocation of the teacher’s certificate,” and it authorizes the relevant County Attorney and the
23 Attorney General to initiate an enforcement action against the teacher.

24 59. Third, Section 50 of HB 2898 grants authority to the Attorney General to initiate
25 civil actions against a “public official, employee or agent of this State” who uses public resources
26 “including email, equipment, or compensated work time” to “organize, plan or execute any

1 activity that impedes or prevents a public school from operating for any period of time”

2 60. Section 50 also authorizes the Attorney General to initiate civil actions against a
3 teacher, administrator, or other state employee “whose violation of [Section 21] resulted in an
4 illegal use of public monies.”

5 **SB 1825 (budget reconciliation for higher education)**

6 61. SB 1825’s title is:

7 AN ACT AMENDING TITLE 3, CHAPTER 1, ARTICLE 3, ARIZONA
8 REVISED STATUTES, BY ADDING SECTION 3-127; AMENDING TITLE 15,
9 CHAPTER 13, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING
10 SECTIONS 15-1647 AND 15-1650.05; AMENDING SECTION 15-1671,
11 ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 13,
12 ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; AMENDING
13 SECTION 15-1781, ARIZONA REVISED STATUTES; AMENDING TITLE 15,
14 CHAPTER 13, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING
15 SECTION 15-1781.01; AMENDING TITLE 15, CHAPTER 14, ARTICLE 5,
16 ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1851.01;
17 REPEALING SECTIONS 15-1854 AND 15-1855, ARIZONA REVISED
18 STATUTES; AMENDING SECTION 15-1877, ARIZONA REVISED
19 STATUTES; REPEALING LAWS 2008, CHAPTER 287, SECTION 39, AS
20 AMENDED BY LAWS 2009, FIRST SPECIAL SESSION, CHAPTER 6,
21 SECTION 3; **APPROPRIATING MONIES; RELATING TO BUDGET
22 RECONCILIATION FOR HIGHER EDUCATION.**

23 (Emphasis added).

24 62. Despite the title limiting the scope of the act’s contents to provisions “relating to
25 budget reconciliation for higher education,” SB 1825 includes substantive policy legislation that
26 has nothing to do with the budget.

63. In Section 2 (A.R.S. § 15-1650.05), subject to limited exceptions, “the Arizona
Board of Regents, a public university, or a community college may not require that a student
obtain a COVID-19 vaccination or show proof of receiving a COVID-19 vaccination or place
any conditions on attendance or participation in classes or academic activities, including
mandatory testing or face covering usage, if the person chooses not to obtain a COVID-19

1 vaccination or disclose whether the person has been vaccinated[.]”

2 64. It also prohibits public universities from implementing testing requirements
3 unless: (1) “a significant COVID-19 outbreak occurs in a shared student housing setting that
4 poses a risk to the students or staff,” and (2) the university first gets “approval from the
5 department of health services.”

6 **SB 1824 (health budget reconciliation)**

7 65. SB 1824’s title is:

8 AN ACT AMENDING TITLE 8, CHAPTER 4, ARTICLE 4, ARIZONA
9 REVISED STATUTES, BY ADDING SECTION 8-512.02; AMENDING TITLE
10 20, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
11 SECTION 20-126; AMENDING TITLE 23, CHAPTER 2, ARTICLE 1,
12 ARIZONA REVISED STATUTES, BY ADDING SECTION 23-206;
13 AMENDING SECTION 30-654, ARIZONA REVISED STATUTES;
14 AMENDING TITLE 36, CHAPTER 1, ARTICLE 2, ARIZONA REVISED
15 STATUTES, BY ADDING SECTIONS 36-147 AND 36-148; AMENDING
16 SECTIONS 36-446.02, 36-446.04, 36-557, 36-591, 36-592, 36-594 AND 36-672,
17 ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6,
18 ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4.2; AMENDING
19 SECTIONS 36-694, 36-694.01 AND 36-1201, ARIZONA REVISED
20 STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY
21 ADDING CHAPTER 31; REPEALING SECTION 41-3021.11, ARIZONA
22 REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2,
23 ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3022.26;
24 AMENDING SECTION 46-452.02, ARIZONA REVISED STATUTES;
25 **APPROPRIATING MONIES; RELATING TO HEALTH BUDGET**
26 **RECONCILIATION.**

(Emphasis added).

22 66. Despite the title limiting the scope of the act’s contents to provisions “relating to
23 health budget reconciliation,” SB 1824 includes substantive policies that have nothing to do with
24 the budget.

25 67. First, Section 12 provides that “an immunization for which a United States Food
26 and Drug Administration emergency use authorization has been issued” cannot be required for

1 school attendance, and it provides that immunizations cannot be required for school attendance
2 unless set forth in a rule by the Director of the Department of Health Services.

3 68. Second, Section 13 prohibits the State or any city, town, or county “from
4 establishing a COVID-19 vaccine passport,” or requiring that any person “be vaccinated for
5 COVID-19” or that any business obtain “proof of the COVID-19 vaccination status of any patron
6 entering the business establishment.”

7 **SB 1819 (budget procedures)**

8 69. SB 1819’s title is:

9 AN ACT AMENDING SECTION 5-110, ARIZONA REVISED STATUTES;
10 AMENDING TITLE 5, CHAPTER 5.1, ARTICLE 2, ARIZONA REVISED
11 STATUTES, BY ADDING SECTION 5-576; AMENDING SECTION 5-1318,
12 ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 1,
13 ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 16-
14 132, 16-133 AND 16-138; AMENDING TITLE 16, CHAPTER 4, ARTICLE 6,
15 ARIZONA REVISED STATUTES, BY ADDING SECTION 16-504;
16 AMENDING TITLE 16, CHAPTER 4, ARTICLE 10, ARIZONA REVISED
17 STATUTES, BY ADDING SECTION 16-604; AMENDING SECTIONS 26-302,
18 26-303, 35-192, 36-405, 36-787, 38-803, 38-832, 38-840.01, 38-848, 38-848.02,
19 38-866, 38-883, 39-201 AND 41-121.02, ARIZONA REVISED STATUTES;
20 AMENDING TITLE 41, CHAPTER 1, ARTICLE 5, ARIZONA REVISED
21 STATUTES, BY ADDING SECTION 41-191.12; AMENDING SECTION 41-
22 714, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1033,
23 ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021,
24 CHAPTER 340, SECTION 1; AMENDING SECTIONS 41-1277 AND 41-
25 1279.03, ARIZONA REVISED STATUTES; AMENDING TITLE 41,
26 CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 41-1306; PROVIDING FOR TRANSFERRING AND
RENUMBERING; AMENDING SECTION 41-1307, ARIZONA REVISED
STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING
SECTION 41-1365, ARIZONA REVISED STATUTES; AMENDING TITLE 41,
CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 41-1506.02; AMENDING TITLE 41, ARIZONA REVISED
STATUTES, BY ADDING CHAPTER 16; REPEALING TITLE 41, CHAPTER
16, ARIZONA REVISED STATUTES; AMENDING LAWS 2019, CHAPTER
232, SECTION 1; **APPROPRIATING MONIES; RELATING TO STATE
BUDGET PROCEDURES.**

1 (Emphasis added).

2 70. Despite the title limiting the scope of the act’s contents to provisions “relating to
3 state budget procedures,” SB 1819 includes substantive policy legislation that has nothing to do
4 with budget procedures.

5 71. Section 4 (16-138) requires the Secretary of State to give access to the statewide
6 voter registration database to any “person or entity that is designated by the legislature” to review
7 voters who are registered to vote for federal only races.

8 72. Section 5 sets forth various requirements for “fraud countermeasures” used in
9 paper ballots.

10 73. In Section 33, the Legislature grants the Attorney General the authority to defend
11 election laws, provides that in “any disagreement between the attorney general and the secretary
12 of state or any other state official concerning the defense of a state election law, the authority of
13 the attorney general to defend the law is paramount,” authorizes the Attorney General to “speak[]
14 for this state” in “any proceeding in which the validity of a state election law is challenged”
15 “through January 2, 2023,” and states that “[a]mong state officials, the attorney general has sole
16 authority to direct the defense of the state election law or laws being challenged.”

17 74. Section 35 provides that “the secretary of state shall submit to the United States
18 election assistance commission a request that the commission include on the federal voter
19 registration form this state’s state-specific instructions to provide proof of citizenship.”

20 75. In Section 39, the bill prohibits a “county, city or town” from adopting “any order,
21 rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts private
22 businesses, schools, churches or other private entities, including an order, rule, ordinance or
23 regulation that mandates using face coverings, requires closing a business or imposes a curfew.”

24 76. Plaintiffs Harrel and Ontiveros live in a county in which “COVID-19 cases [have]
25 more than quadrupled from the first week of July to the first week of August.” Nicole Ludden,
26 Kathryn Palmer, *Pima County supervisors reject vaccine mandate for employees, mask mandate*

1 *for schools*, Ariz. Daily Star, Aug. 11, 2021, [https://tucson.com/news/local/pima-county-](https://tucson.com/news/local/pima-county-supervisors-reject-vaccine-mandate-for-employees-mask-mandate-for-schools/article_01324294-f9f5-11eb-a88c-5b35d95c8ad9.html?utm_medium=social&utm_source=email&utm_campaign=user-share)
2 [supervisors-reject-vaccine-mandate-for-employees-mask-mandate-for-](https://tucson.com/news/local/pima-county-supervisors-reject-vaccine-mandate-for-employees-mask-mandate-for-schools/article_01324294-f9f5-11eb-a88c-5b35d95c8ad9.html?utm_medium=social&utm_source=email&utm_campaign=user-share)
3 [schools/article_01324294-f9f5-11eb-a88c-](https://tucson.com/news/local/pima-county-supervisors-reject-vaccine-mandate-for-employees-mask-mandate-for-schools/article_01324294-f9f5-11eb-a88c-5b35d95c8ad9.html?utm_medium=social&utm_source=email&utm_campaign=user-share)
4 [5b35d95c8ad9.html?utm_medium=social&utm_source=email&utm_campaign=user-share](https://tucson.com/news/local/pima-county-supervisors-reject-vaccine-mandate-for-employees-mask-mandate-for-schools/article_01324294-f9f5-11eb-a88c-5b35d95c8ad9.html?utm_medium=social&utm_source=email&utm_campaign=user-share).

5 77. The unconstitutionally adopted statutes that are the subject of this case are already
6 impeding Pima County’s ability to exercise local control to protect its residents, including
7 Plaintiffs Harrel and Ontiveros, during a public health emergency.

8 78. Indeed, at a Pima County Board of Supervisors meeting on August 10, the board
9 considered proposals for local COVID-19 mitigation measures, including a local vaccine
10 requirement and a mask mandate in schools, but the proposals did not pass. *Id.*

11 79. In voting no on the vaccine mandate, the supervisors noted the provisions in the
12 BRBs prohibiting local control over COVID-19 mitigation. *Id.* Supervisor Rex Scott “called the
13 law prohibiting vaccine mandates ‘a reckless, irresponsible, ignorant decision,’” but “he didn’t
14 want to put a mandate in place that’s ‘essentially toothless’ because of the state law.” *Id.*

15 80. The school mask mandate failed by a 3-2 vote. In voting no, Supervisor Scott again
16 referenced the BRBs: “If we pass it, we are putting school districts and public charter schools in
17 between us and the state[.]” *Id.*

18 81. Section 47 establishes a “special committee” to (1) “Receive and review the
19 findings of the senate audit of the 2020 general election in Maricopa county,” and (2)
20 “Recommend to the president of the senate the appropriate legislative action based on the
21 findings of the audit, including a call for a special session of the legislature to implement the
22 special committee’s recommendations.”

23 82. Even more, SB 1819 contains legislation on multiple, unrelated subjects.

24 83. Among other subjects, SB 1819 covers: dog racing permitting; requirements for
25 the Arizona Game and Fish Department to assist with voter registration; the Governor’s
26 emergency powers related to public health; amending the definition of a “newspaper” under

1 Arizona law; local authority to pass COVID mitigation measures; amending the study committee
2 on missing and indigenous peoples; authorizing investigations of the practices of social media
3 platforms and internet search engines relating to political contributions; the creation of a “special
4 committee” to review the Maricopa County election “audit”; and requirements for the agreement
5 of unit owners to terminate a condominium.

6 84. None of these subjects have any logical connection to each other.

7 **These BRBs Violate the Title Requirement and Single Subject Rule**

8 85. The path these BRBs took through the legislative process makes clear that they are
9 exactly the type of legislation article IV, part 2, § 13 was intended to prohibit.

10 86. By way of background, Republicans hold a majority by only one vote in each
11 chamber of the Legislature, and they were having a difficult time gathering enough votes to pass
12 the budget this year.

13 87. To put pressure on the Legislature to pass the budget, Governor Ducey vetoed 22
14 bills, and announced that he would not sign any legislation until the Legislature passed the
15 budget. Jeremy Duda, *Ducey vetoes 22 bills, says nothing will be signed until budget is approved*,
16 *Ariz. Mirror*, May 28, 2021, [https://www.azmirror.com/2021/05/28/ducey-vetoes-22-bills-says-](https://www.azmirror.com/2021/05/28/ducey-vetoes-22-bills-says-nothing-will-be-signed-until-budget-is-approved/)
17 [nothing-will-be-signed-until-budget-is-approved/](https://www.azmirror.com/2021/05/28/ducey-vetoes-22-bills-says-nothing-will-be-signed-until-budget-is-approved/).

18 88. Running out of time, lawmakers amended the BRBs with a hodgepodge of
19 substantive policy legislation to get the votes they needed to pass the budget in violation of the
20 constitution.

21 89. Representative Kelly Townsend announced that she would not “vote for the
22 education budget bill with a provision that gives authority to school boards to mandate masks on
23 our kids,” and she would vote no on the BRB “unless there is language that puts the decision
24 into the hands of the parent.” Twitter, May 25 2021 8:56 a.m.,
25 <https://twitter.com/AZKellyT/status/1397220158926688264?s=20--Kelly>; Twitter, May 25,
26 11:55 a.m., <https://twitter.com/AZKellyT/status/1397265181990817792?s=20--Kelly>. True and

1 correct copies are attached as “Exhibit C.”

2 90. In a radio interview after the House passed the budget, Representative Joseph
3 Chaplik discussed how certain conservative policies “got put into the budget at the last hour.”
4 Rep. Chaplik explained that it is difficult to get “all 31 Republicans” to pass the budget, and he
5 boasted that he told fellow lawmakers “I’m not signing onto [HB 2898]” unless it included the
6 ban on mask mandates for students. The Morning Ritual with Garret Lewis, KNST, June 27,
7 2021, [https://www.iheart.com/podcast/82-garret-lewis-28403290/episode/the-morning-ritual-
8 with-garret-lewis--84194700/](https://www.iheart.com/podcast/82-garret-lewis-28403290/episode/the-morning-ritual-with-garret-lewis--84194700/).

9 91. Rep. Chaplik also proclaimed on Twitter that he “wouldn’t sign the #AZBudget
10 until masks were made optional in schools.” Twitter, July 27, 2021 12:56 p.m.,
11 <https://twitter.com/JosephChaplik/status/1420110753151913985>. A true and correct copy is
12 attached as “Exhibit D.”

13 92. Representative Bret Roberts likewise boasted that he pressed for the ban on
14 vaccination requirements in HB 1824 after the same policy failed to garner enough support to
15 pass through the ordinary legislative process. Twitter, June 24, 2021 7:23 p.m.,
16 <https://twitter.com/BretRbrts/status/1408249404163649536?s=20> (“#SB1824 would not have
17 the Anti-Vax Passport policy in it today if I caved on #HB2190 several weeks ago. It’s not
18 exactly the policy I wanted however it’s more than what was being proposed at the time. Proud
19 to have stood tall on this issue.”). A true and correct copy is attached as “Exhibit E.”

20 93. The ban on teaching certain concepts related to race, ethnicity, and gender also
21 appeared at the last minute through a BRB amendment after it failed to pass through the usual
22 legislative channels and process, with an opportunity for a hearing and testimony.

23 94. After the House passed a bill with this teaching prohibition (SB 1532), it failed in
24 the Senate. But the Legislature was able to pass nearly identical language through an amendment
25 to HB 2898. Floor Amendment, HB 2898, 55th Leg., 1st Reg. Sess. (Ariz. 2021),
26 https://www.azleg.gov/legtext/55leg/1R/adopted/H.2898FloorCOBB3_Merged.pdf.

1 95. Never before has the legislature so ignored the normal process and procedure for
2 enacting laws as they did this session.

3 96. It is up to the courts to enforce the dictates of the Arizona Constitution before
4 article 4, part 2, § 13 is rendered wholly meaningless.

5 97. Under the constitution, substantive policies that aren't adequately described and
6 noticed in the title and that have no relation to budget reconciliation do not belong in a BRB.

7 98. Indeed, the Arizona Supreme Court has noted – without deciding because the
8 parties did not raise the issue – that BRBs similar to those described above appeared to violate
9 “the single subject rule in the legislative process.” *Bennett*, 206 Ariz. at 528 ¶ 39.

10 **HB 2898 Bans Mask Mandates – Only in Public and Charter Schools – in the Face of**
11 **Public Health Crisis**

12 99. Across the country and in Arizona, the number of COVID-19 cases is climbing,
13 including among children.

14 100. As of August 5, there were 4,292,120 total child COVID-19 cases nationwide, and
15 Arizona has 156,740 cumulative child cases. Joint Report of the American Academy of
16 Pediatrics and the Children's Hospital Association, Aug. 5, 2021,
17 [https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-](https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf)
18 [%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf](https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf).

19 101. Arizona has the highest reported rate of child COVID-19 hospitalizations in the
20 country. *Id.*

21 102. “Some doctors on the front lines say they are seeing more critically ill children
22 than they have at any previous point of the pandemic and that the highly contagious Delta variant
23 is likely to blame.” Emily Anthes, *The Delta Variant Is Sending More Children to the Hospital.*
24 *Are They Sicker, Too?*, NY Times, Aug. 9, 2021 11:16 a.m.,
25 <https://www.nytimes.com/2021/08/09/health/coronavirus-children-delta.html>.

1 103. “As the more contagious delta variant has become the dominant strain of COVID-
2 19 in Arizona and nationally, there’s been an overall uptick in infections, including kids getting
3 sick. Children under 12 are still not eligible to get the vaccine, making them more vulnerable to
4 infection, especially in areas where fewer adults around them are vaccinated.” Alison Steinbach,
5 *7 things to know about kids, COVID-19 and other circulating viruses*, Ariz. Republic, Aug 5,
6 2021 8:00 a.m., [https://www.azcentral.com/story/news/local/arizona-health/2021/08/05/7-](https://www.azcentral.com/story/news/local/arizona-health/2021/08/05/7-things-know-covid-19-rsv-other-illnesses-arizona-kids/5469543001/)
7 [things-know-covid-19-rsv-other-illnesses-arizona-kids/5469543001/](https://www.azcentral.com/story/news/local/arizona-health/2021/08/05/7-things-know-covid-19-rsv-other-illnesses-arizona-kids/5469543001/).

8 104. “At Banner Health, Arizona’s largest health care system, pediatric patients
9 currently account for about 5% of all COVID-19 hospital admissions, chief clinical officer Dr.
10 Marjorie Bessel said Tuesday. And Phoenix Children’s Hospital is seeing an increasing number
11 of unvaccinated children ending up in the hospital with COVID-19.” *Id.*

12 105. As of August 5, 2021, Arizona had the second highest number of child COVID-
13 19 deaths in the country. [https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-](https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf)
14 [%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf](https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%208.5%20FINAL.pdf).

15 106. In a recent research report by Dr. Joe Gerald of the University of Arizona, COVID-
16 19 rates in Arizona have been increasing for eight straight weeks, signaling that a “substantial
17 surge is imminent in the coming weeks.” *Joe Gerald, MD, PhD*, Weekly Arizona COVID-19
18 Data Report: Researcher Analyzes Arizona COVID-19 Spread Models for Decision-Makers,
19 Univ. of Ariz., Aug. 6, 2021, [https://publichealth.arizona.edu/news/2021/covid-19-forecast-](https://publichealth.arizona.edu/news/2021/covid-19-forecast-model)
20 [model](https://publichealth.arizona.edu/news/2021/covid-19-forecast-model).

21 107. Not surprisingly, the “CDC recommends universal indoor masking for all teachers,
22 staff, students, and visitors to schools, regardless of vaccination status.” CDC, *Interim Public*
23 *Health Recommendations for Fully Vaccinated People*, July 28, 2021,
24 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>.

25 108. Public health experts all agree that wearing masks in schools is an important
26 science and evidence-based policy for minimizing the spread of COVID-19 among children and

1 teachers. See American Academy of Pediatrics, *COVID-19 Guidance for Safe Schools*,
2 [https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)
3 [guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/](https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/) (last
4 visited Aug. 12, 2021); Arizona Medical Association, *Arizona Medical Association's Statement*
5 *on Upholding Public Health Policies in K-12 Schools*, July 16, 2021,
6 [https://www.azmed.org/news/573753/Arizona-Medical-Associations-Statement-on-Upholding-](https://www.azmed.org/news/573753/Arizona-Medical-Associations-Statement-on-Upholding-Public-Health-Policies-in-K-12-Schools.htm)
7 [Public-Health-Policies-in-K-12-Schools.htm](https://www.azmed.org/news/573753/Arizona-Medical-Associations-Statement-on-Upholding-Public-Health-Policies-in-K-12-Schools.htm); Arizona Academy of Family Physicians, *AzAFP*
8 *Position Statement on COVID-19 Back To School Safety*, [http://www.azafp.org/site/azafp-](http://www.azafp.org/site/azafp-position-statement-on-covid-19-back-to-school-safety-a/)
9 [position-statement-on-covid-19-back-to-school-safety-a/](http://www.azafp.org/site/azafp-position-statement-on-covid-19-back-to-school-safety-a/) (last visited Aug. 12, 2021).

10 109. Several Arizona school districts have adopted mask mandates in line with this
11 expert guidance, including (among others) Phoenix Union High School District, Madison
12 Elementary School District, Alhambra Elementary School District, Roosevelt Elementary
13 School District, and Phoenix Elementary School District, and Tucson Unified School District.

14 110. In response, 25 Republican lawmakers issued a statement arguing that the
15 Legislature “very thoughtfully attached a retroactivity clause to [HB 2898],” claiming that school
16 districts’ mask mandates “border[] on anarchy and destabilizes the very foundation of our
17 society,” and calling on the Governor to withhold funding from and “[i]nitiate legal action
18 against any school district that is non-compliant” with HB 2898. News Release, Ariz. House of
19 Rep., Rep. Hoffman, Aug. 11, 2021,
20 <https://www.azleg.gov/press/house/55LEG/1R/210811HOFFMAN.pdf>. A true and correct copy
21 is attached as “Exhibit F.”

22 111. Unless HB 2898 is declared unconstitutional and enjoined, school districts’ mask
23 mandates will be unlawful when HB 2898 takes effect on September 29, and public schools
24 could be left powerless to protect their students and staff.

25 112. Even more, they are at risk of adverse action being taken against them, as urged
26 by Republican lawmakers.

1 113. Private schools, on the other hand, will be unaffected by HB 2898 and may
2 continue to require masks to keep students and staff safe.

3 114. Brophy College Preparatory, for example, has a mask mandate for students and
4 staff, and will be able to extend that policy even if HB 2898 takes effect. Letter from the Brophy
5 Principal's Office, Aug. 4, 2021,
6 [https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=435655&s=750&snd](https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=435655&s=750&snd=8a1d17dc-bce7-442e-ac99-633ceceb5911)
7 [=8a1d17dc-bce7-442e-ac99-633ceceb5911](https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=435655&s=750&snd=8a1d17dc-bce7-442e-ac99-633ceceb5911) (last visited Aug. 12, 2021). A true and correct copy
8 is attached as "Exhibit G."

9 115. Because of Section 12 of HB 2898, students in Arizona's public and charter
10 schools will be less safe in their educational environment than students in private schools.

11 116. According to Dr. Gerald, "[r]esumption of in-person instruction (K-12 and
12 universities) in the face of high community transmission, low vaccination rates, prohibition of
13 universal masking, lack of surveillance testing, and minimal physical distancing will
14 undoubtedly lead to frequent school-related outbreaks and accelerating community
15 transmission." *Joe Gerald, MD, PhD*, Weekly Arizona COVID-19 Data Report: Researcher
16 Analyzes Arizona COVID-19 Spread Models for Decision-Makers, Univ. of Ariz., Aug. 6, 2021,
17 <https://publichealth.arizona.edu/news/2021/covid-19-forecast-model>.

18 117. Indeed, many Arizona schools are already reporting concerning COVID outbreaks.

19 118. There are currently 22 active outbreaks in Maricopa County schools, according to
20 County health data. *See* Maricopa County, Schools COVID-19 Dashboard & Guidance,
21 <https://www.maricopa.gov/5594/School-Metrics#map> (last visited Aug. 11, 2021). The cases
22 include 1,158 students and 390 staff. *Id.*

23 119. For example, the Chandler Unified School District has 200 active cases. 2021-22
24 CUSD COVID-19 Dashboard, <https://www.cusd80.com/coviddashboard> (last visited Aug. 12,
25 2021).

26

1 120. The J.O. Combs Unified School District has 111 active cases, and one school in
2 the district, Ellsworth Elementary, had to close all 5th and 6th grade classrooms this week.
3 COVID-19 Case Dashboard, J.O. Combs Unified School District,
4 [https://www.jocombs.org/apps/pages/index.jsp?uREC_ID=908409&type=d&pREC_ID=19639](https://www.jocombs.org/apps/pages/index.jsp?uREC_ID=908409&type=d&pREC_ID=1963944)
5 [44](https://www.jocombs.org/apps/pages/index.jsp?uREC_ID=908409&type=d&pREC_ID=1963944).

6 121. In Yavapai County, Ash Fork School District had to close its schools because of a
7 COVID outbreak a mere two weeks after school started. *See* Rocio Hernandez, *Yavapai County*
8 *School District Cancels Classes Due To COVID-19 Cases*, KJZZ, July 29, 2021 5:34 p.m.,
9 [https://kjzz.org/content/1703792/yavapai-county-school-district-cancels-classes-due-covid-19-](https://kjzz.org/content/1703792/yavapai-county-school-district-cancels-classes-due-covid-19-cases)
10 [cases](https://kjzz.org/content/1703792/yavapai-county-school-district-cancels-classes-due-covid-19-cases).

11 122. Arizona students have a right to physical safety in their school environment. And
12 parents must be able to expect that Arizona schools will keep students safe and will take
13 appropriate measures to protect children while they attend school.

14 123. HB 2898 takes this right away from children in public and charter schools – but
15 not private schools – in violation of the Equal Protection clause of the Arizona Constitution.

16 **Count I**

17 **(Declaratory Judgment – Violation of the Title Requirement)**

18 124. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set
19 forth herein.

20 125. Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed
21 by the Legislature “shall embrace but one subject and matters properly connected therewith,
22 which subject shall be expressed in the title; but if any subject shall be embraced in an act which
23 shall not be expressed in the title, such act shall be void only as to so much thereof as shall not
24 be embraced in the title.”

25 126. The title of HB 2898 does not give notice of the contents of Sections 12, 21, and
26 50 of HB 2898.

1 127. Sections 12, 21, and 50 of HB 2898 are not related to kindergarten through grade
2 twelve budget reconciliation.

3 128. The title of SB 1825 does not give notice of the contents of Section 2 (A.R.S. §
4 15-1650.05) of SB 1825.

5 129. Section 2 (A.R.S. § 15-1650.05) of SB 1825 is not related to budget reconciliation
6 for higher education.

7 130. The title of SB 1824 does not give notice of the contents of Sections 12 and 13 of
8 SB 1824.

9 131. Sections 12 and 13 of SB 1824 are not related to health budget reconciliation.

10 132. The title of SB 1819 does not give notice of the contents of Section 4 (16-138) and
11 Sections 5, 33, 35, 39, and 47 of SB 1819.

12 133. Section 4 (16-138) and Sections 5, 33, 35, 39, and 47 of SB 1819 are not related
13 to budget procedures.

14 134. An actual and justiciable controversy exists regarding the constitutionality of HB
15 2898, SB 1825, SB 1824, and SB 1819 because they were signed by the Governor on June 30,
16 2021 and become effective on September 29, 2021.

17 135. Plaintiffs request a declaration that HB 2898, Sections 12, 21, and 50; SB 1825,
18 Section 2 (A.R.S. § 15-1650.05); SB 1824, Sections 12 and 13; and SB 1819, Section 4 (16-138)
19 and Sections 5, 33, 35, 39, and 47 violate the title requirement in article IV, part 2, section 13 of
20 the Arizona Constitution.

21 **Count II**

22 **(Injunctive Relief – Violation of the Title Requirement)**

23 136. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set forth
24 herein.

25 137. For the reasons set forth in this Complaint, HB 2898, Sections 12, 21, and 50; SB
26 1825, Section 2 (A.R.S. § 15-1650.05); SB 1824, Sections 12 and 13; and SB 1819, Section 4

1 (16-138) and Sections 5, 33, 35, 39, and 47 violate the title requirement in article IV, part 2,
2 section 13 of the Arizona Constitution.

3 138. Absent the entry of an injunction, Defendants will implement and enforce HB
4 2898, Sections 12 and 21; SB 1825, Section 2 (A.R.S. § 15-1650.05); SB 1824, Sections 12 and
5 13; and SB 1819, Section 4 (16-138) and Sections 5, 33, 35, 39, and 47.

6 139. Absent the entry of an injunction, Plaintiffs will suffer irreparable harm caused by
7 the substantive policies enacted through unconstitutional legislation as detailed in this
8 Complaint.

9 140. Absent the entry of an injunction, Plaintiffs Lewis, Mamani, and Ontiveros and
10 Plaintiff AEA's teacher members will be subject to an unconstitutional and vague prohibition on
11 teaching certain "concepts" to their students, including the risk of disciplinary action and civil
12 enforcement actions if they do not comply.

13 141. Absent the entry of an injunction, Plaintiffs Kirsch's and Newhauser's ability to
14 work in a reasonably safe environment is being impeded and threatened.

15 142. Absent the entry of an injunction, Plaintiffs Alston and Gallardo and Plaintiff
16 ASBA's school board members will be left powerless to take reasonable measures to keep
17 students and staff safe in schools.

18 143. Indeed, if Arizona public and charter schools cannot impose reasonable COVID-
19 19 mitigation measures, students and teachers will get sick, and some may die.

20 144. Absent the entry of an injunction, Plaintiffs Lujan and CAA's and AZAN's core
21 mission and values on which they have devoted significant resources will be threatened and
22 impeded by this unconstitutional legislation.

23 145. The balance of hardships and public interest both favor Plaintiffs, who seek to
24 uphold the Arizona Constitution and protect the health and safety of Arizonans.

25
26

1 **Count III**

2 **(Declaratory Judgment – Violation of the Single Subject Rule)**

3 146. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set forth
4 herein.

5 147. Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed
6 by the Legislature “shall embrace but one subject and matters properly connected therewith....”

7 148. Article IV, part 2, § 20 of the Arizona Constitution requires that “appropriations
8 shall be made by separate bills, each embracing but one subject.”

9 149. SB 1819 contains multiple subjects that have no “logical or natural connection” to
10 each other, nor do they “fall under some one general idea, be so connected with or related to
11 each other, either logically or in popular understanding, as to be parts of, or germane to, one
12 general subject.” *Litchfield Elementary*, 125 Ariz. at 224.

13 150. An actual and justiciable controversy exists regarding the constitutionality of SB
14 1819 because it was signed by the Governor on June 30, 2021 and becomes effective on
15 September 29, 2021.

16 151. Plaintiffs request a declaration that SB 1819 violates the single subject requirement
17 in article IV, part 2, section 13 of the Arizona Constitution.

18 152. To the extent SB 1819 is considered an appropriations bill, Plaintiffs request a
19 declaration that SB 1819 violates the single subject requirement in article IV, part 2, section 20
20 of the Arizona Constitution.

21 **Count IV**

22 **(Injunctive Relief – Violation of the Single Subject Rule)**

23 153. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set
24 forth herein.

25 154. For the reasons set forth in this Complaint, SB 1819 violates the single subject
26 requirement in article IV, part 2, section 13 of the Arizona Constitution.

1 155. Absent the entry of an injunction, the State and its agents will implement and
2 enforce SB 1819.

3 156. Absent the entry of an injunction, Plaintiffs will suffer irreparable harm caused by
4 the policies enacted through this unconstitutional legislation as detailed in this Complaint.

5 157. The balance of hardships and public interest both favor Plaintiffs, who seek to
6 uphold the Arizona Constitution and protect the health and safety of Arizonans.

7 **Count V**

8 **(Declaratory Judgment – Violation of Equal Protection)**

9 158. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set forth
10 herein.

11 159. Article II, section 13 of the Arizona Constitution provides that “[n]o law shall be
12 enacted granting to any citizen, class of citizens, or corporation . . . which, upon the same terms,
13 shall not equally belong to all citizens or corporations.”

14 160. When a statute that treats two classes differently with respect to a “fundamental
15 right,” Arizona courts “subject it to strict scrutiny and will only uphold it if it is necessary to
16 promote a compelling state interest.” *Big D Const. Corp. v. Ct. of Appeals for State of Ariz., Div.*
17 *One*, 163 Ariz. 560, 566 (1990).

18 161. Under Arizona law, education is a fundamental constitutional right.

19 162. HB 2898’s distinction between children in Arizona’s public schoolchildren and
20 private schoolchildren regarding their physical safety in schools is not necessary to promote any
21 compelling state interest.

22 163. Even under a rational basis standard, Section 12 of HB 2898 irrationally and
23 arbitrarily discriminates against Arizona’s public schoolchildren, and the distinction is not
24 reasonably related to furthering any legitimate state purpose.

25 164. An actual and justiciable controversy exists regarding the constitutionality of
26 Section 12 of HB 2898 because it was signed by the Governor on June 30, 2021 and becomes

1 effective on September 29, 2021.

2 165. Plaintiffs request a declaration that Section 12 of HB 2898 violates article II,
3 section 13 of the Arizona Constitution.

4 **Count VI**

5 **(Injunctive Relief – Violation of Equal Protection)**

6 166. Plaintiffs incorporate the allegations in all preceding paragraphs as if fully set forth
7 herein.

8 167. Absent the entry of an injunction, the State and its agents will implement and
9 enforce Section 12 of HB 2898.

10 168. Section 12 of HB 2898 violates article II, section 13 of the Arizona Constitution
11 for the reasons set forth in this Complaint.

12 169. Absent the entry of an injunction, the minor children of Plaintiffs Lewis, Mamani,
13 Franks, Ontiveros, Harrel, and Monnet will suffer irreparable harm caused by the substantive
14 policies enacted through unconstitutional legislation.

15 170. Indeed, if Arizona public and charter schools cannot impose reasonable COVID-
16 19 mitigation measures, students and teachers will get sick, and some may die.

17 171. As a result, Section 12 of HB 2898 will also cause significant harm to Arizona’s
18 public and charter school students, teachers, and their families.

19 172. The balance of hardships and public interest both favor Plaintiffs, who seek to
20 uphold the Arizona Constitution and protect the health and safety of children.

21 **Prayer for Relief**

22 WHEREFORE, Plaintiffs respectfully requests that this Court provide the following
23 relief:

24 A. A declaratory judgment declaring that HB 2898, Sections 12, 21, and 50, violate
25 the title requirement in article IV, part 2, § 13 of the Arizona Constitution;

26 B. A declaratory judgment declaring that SB 1825, Section 2 (A.R.S. § 15-1650.05),

1 violates the title requirement in article IV, part 2, § 13 of the Arizona Constitution;

2 C. A declaratory judgment declaring that SB 1824, Sections 12 and 13, violate the
3 title requirement in article IV, part 2, § 13 of the Arizona Constitution;

4 D. A declaratory judgment declaring that SB 1819, Section 4 (16-138) and Sections
5 5, 33, 35, 39, and 47, violate the title requirement in article IV, part 2, § 13 of the Arizona
6 Constitution;

7 E. A declaratory judgment declaring that SB 1819 violates the single subject
8 requirement in article IV, part 2, § 13 of the Arizona Constitution;

9 F. Alternatively, a declaratory judgment declaring that SB 1819 violates the single
10 subject requirement in article IV, part 2, § 20 of the Arizona Constitution;

11 G. A declaratory judgment declaring that Section 12 of HB 2898 violates article II,
12 section 13 of the Arizona Constitution;

13 H. A preliminary and permanent injunction enjoining the State and its agents from
14 implementing or enforcing HB 2898, Sections 12, 21, and 50; SB 1825, Section 2 (A.R.S. § 15-
15 1650.05); SB 1824, Sections 12 and 13; and SB 1819;

16 I. An order awarding the Plaintiffs their taxable costs under A.R.S. §§ 12-341 and
17 12-1840;

18 J. An order awarding Plaintiffs their attorneys' fees under the private attorney
19 general doctrine and any other applicable statute or equitable doctrine; and

20 K. Any other relief as may be appropriate.

1 RESPECTFULLY SUBMITTED this 12th day of August, 2021.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ Roopali H. Desai

4 Roopali H. Desai

5 D. Andrew Gaona

Kristen Yost

6 **ARIZONA CENTER FOR LAW IN THE**
7 **PUBLIC INTEREST**

8 Daniel J. Adelman

9 *Attorneys for Plaintiffs*

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EXHIBIT A

Chapter Seven

The State Budget Process

Preparing the state’s annual spending plan is a year-round process that determines the size and scope of government in Arizona. Two state agencies share the responsibility for developing the annual budget. They are the Office of Strategic Planning and Budgeting (OSPB) in the executive branch and the Joint Legislative Budget Committee (JLBC) in the legislative branch.

On or before June 1 of each year, OSPB issues instructions to the state budget units (agencies) to guide them in preparing their budget requests for the fiscal year (July 1 through June 30) following the calendar year in which the budgets are prepared. The budget units submit their requests for the next two fiscal years.

The budget units must submit their requests to the Governor by September 1, or within an extension of 30 days thereafter if approved by the director of OSPB. OSPB sends a copy of each agency’s budget request to the staff of the JLBC, which begins to develop its own budget proposals. Analysts from each office work closely with the budget unit financial officers to determine the programs and funding for each agency function.

Between September 1 and the opening day of the legislative session, the executive and legislative staffs review the budget submissions and prepare the executive budget recommendations and the proposed legislative budget recommendations, respectively. These documents contain operating and capital outlay expenditure plans, estimated revenues and federal funds proposals.

Annually, no later than five days after the regular legislative session convenes, the Governor must submit a budget to the Legislature. The budget must contain a complete plan of proposed expenditures and all monies and revenues estimated to be available. Also required is an explanation of the basis of the estimates and recommendations, including proposed legislation, if any, that the Governor deems necessary to provide revenues to meet the proposed expenditures. JLBC must then prepare an analysis of the Governor’s budget as soon as possible, with recommendations for revisions in expenditures.

Legislative review and deliberation of the two budget options begin shortly after the regular session convenes. Public hearings occur before both the Senate and House Appropriation Committees. The committees may adopt the executive budget or the JLBC staff budget, or they may elect to adopt a budget containing elements of both budgets or entirely new elements.

The Appropriations Committees of each house develop budget recommendations. Both committees are divided into subcommittees that cover the broad functional areas of state government. The approximately 115 state agencies are divided among three subcommittees in a

manner that attempts to equalize work loads. The budget is developed through a process that includes public hearings, subcommittee deliberations and caucus deliberations. During the first week of the session, the JLBC staff briefs the Appropriations Committees on the JLBC budget recommendation. The staff also compares and contrasts its recommendation to the Governor's recommendations. The next step is for subcommittees to "adopt" their budget recommendations for each agency. The subcommittee provides recommendations with regard to funding levels, the number of authorized full-time equivalent (FTE) employee positions, footnotes containing directions and limitations on how the money should be spent, statutory revisions and appropriations report guidance. On completion of the subcommittee work, full committee work and caucus deliberations, the full House and Senate will consider the general appropriations bill with the goal of having the legislation to the Governor before the end of March.

During the legislative session, public hearings are conducted, and before July 1 the budget is adopted by the Legislature through the passage of a general appropriations act, a capital outlay bill and various omnibus reconciliation bills (ORBs). In certain years, the budget bills have been considered during a special session of the Legislature to provide time for their enactment before the beginning of the new fiscal year on July 1. The capital outlay bill is for the purchase and construction of land and buildings. The reconciliation bills are used for statutory adjustments that must be implemented to carry out the adopted budget. A bill to pay past claims against the state, known as the "named claimants bill," and numerous supplemental appropriations bills are also considered during each regular session of the Legislature. Once adopted, the bills are presented to the Governor for approval.

In addition to the normal options of signing or vetoing the bills or allowing them to become law without signature, the Governor may "line-item veto" individual items of appropriations. The Legislature may attempt to override a line-item veto in the same manner as a normal veto override attempt.

Originally enacted in 1993, a budgetary process called "strategic program area review" (SPAR) requires each state agency to develop plans and performance measures to support its budget requests. The agency responsible for a program subject to SPAR initiates the process by conducting a self-assessment of the program. This assessment answers specific questions in various categories: background information, program funding, strategic planning, performance measurement, performance results and other issues posed by the Legislature, the executive branch or the agency. Agencies are required to submit their written self-assessments to the OSPB and JLBC by September 1 of the preceding year. In the second phase, the OSPB and JLBC staffs jointly review the agency self-assessments and gather additional information, as appropriate, to validate agency responses. Together the two staffs prepare a draft report of their findings for each of the programs under review. Before the legislative session begins, agencies are afforded an opportunity to review and comment on the draft reports. The OSPB and JLBC staffs then determine whether revisions are necessary based on the additional information provided by the agencies. Each agency reviews the final product and prepares a formal response for inclusion in the published reports. By law, the OSPB and JLBC staffs are required to publish a final joint report for each SPAR by January 1. The staffs also prepare a composite SPAR document that is provided to each legislator, the Governor and the affected agencies. In the third phase of the SPAR process, Appropriations Committees or other standing committees hold at least one public hearing to recommend whether to retain, eliminate or modify (REM) funding and related statutory references for the programs.

The Joint Committee on Capital Review was established by the Legislature in 1986 and consists of 14 members, including the chairmen of the Senate and House of Representatives

Appropriations Committees, the Majority and Minority Leaders of the Senate and the House, four members of the Senate Appropriations Committee appointed by the President and four members of the House Appropriations Committee appointed by the Speaker of the House. The primary powers and duties of the Joint Committee on Capital Review relate to ascertaining facts and making recommendations to the Legislature regarding state expenditures for land, buildings and improvements. This portion of the state budget is known as “capital outlay.” The Committee has the following powers and duties:

- Develop and approve a uniform formula for computing annual building renewal funding needs and a uniform format for the collection of data for the formula.
- Approve building systems for the purposes of computing and funding building renewal and for preparing capital improvement plans.
- Review the state capital improvement plan and make recommendations to the Legislature concerning funding for land acquisition, capital projects and building renewal.
- Review the expenditure of all monies appropriated for land acquisition, capital projects and building renewal.
- Before the release of monies for construction of a new capital project that has an estimated total cost of more than \$250,000, review the scope, purpose and estimated cost of the project.

The state operating budget is prepared and enacted using what is called the cash basis of accounting. Budgetary cash basis of accounting recognizes expenditures when they are estimated to be paid and revenues when they are estimated to be received by the State Treasurer. Budgetary control is maintained through legislative appropriation and an executive branch “allotment process.” The allotment process allocates appropriations into quarterly allotments according to the appropriation level. The state also maintains an encumbrance accounting system to further enhance budgetary control. With the exception of capital outlay items, encumbrances outstanding at the end of the fiscal year can be paid during a four-week administrative period known as the 13th month. Capital outlay appropriations and their encumbrances continue until the project is completed or abandoned. Unspent appropriations revert to the state general fund after the 13th month unless they are specifically exempted from lapsing, in which case they are retained in the agency fund until they are used, as determined by the Legislature.

EXHIBIT B

2.4 REFERENCE TITLE

The reference title, sometimes referred to as the short title, appears in the upper right-hand corner of each bill, resolution and memorial. (This is not to be confused with the short title discussed in § 4.32.) The reference title gives a brief idea of the nature of the measure and aids in indexing, but it is not part of the substantive law of the measure. The reference title is limited to five or fewer words; commonly used acronyms may be included. Words and phrases used in the reference title are separated by a semicolon. Only proper nouns are capitalized. Do not begin a reference title with a number.

Use identical reference titles only for identical bills, and add a period to the end of one of the reference titles to distinguish that bill from the other. Identical reference titles without a period may be used for a bill and a companion resolution relating to the same subject matter.

Pursuant to council rule 22, the legislative council has determined that the reference title must be an accurate and inclusive description of the contents of the measure and may not reflect political, promotional or advocacy considerations. Legislative council staff must make the final determination of the contents of the reference title of each measure that is introduced. (Adopted 11/7/1996.)

2.5 INTRODUCING BODY AND LEGISLATIVE SESSION DESIGNATION

The words in the upper left portion of the bill title page designate the legislative body, session of the legislature and year in which the bill is presented. This information is automatically formatted by the bill drafting computer program.

2.6 BILL NUMBER AND SPONSOR

The letters "S.B. ____" or "H.B. ____" and the phrase "Introduced by _____" indicate the legislative body in which the bill will be introduced and the name or names of the sponsor or cosponsors. On introduction, the blanks are filled in by House or Senate staff who assign a number to the bill and enter the name or names of the sponsor or cosponsors.

2.7 BILL TITLE

Constitutional Requirements

A title is a constitutional requirement of every bill and has a significant legal effect. The Arizona supreme court has ruled that the title need not be a complete description or index of the substantive law in the bill, but it may not be deceptive or misleading. While the title need not be a synopsis of the bill's contents, it must state the subject of the legislation with sufficient clarity to enable persons reading the title to know what to expect in the body of the act. See White v. Kaibab Rd. Improvement Dist., 113 Ariz. 209 (1976); Hoyle v. Superior Court, 161 Ariz. 224 (App. 1989).

The courts will not invalidate a bill merely because a better title might have been devised if the title fairly states the subject of the legislation to give notice. See In re Lewkowitz, 70 Ariz. 325 (1950).

Order of Title

The bill title is completely capitalized and begins with the phrase "AN ACT". This is followed immediately by:

- A listing of all changes to the Arizona Revised Statutes (e.g., amendments, repeals and additions of statutory sections). The order of the list generally follows the order that these sections appear in the bill. The drafter should individually list each title, chapter, article or section being amended, repealed or added. Never use "through" in a bill title.
- A listing of amendments to or repeals of previously enacted temporary laws.
- "APPROPRIATING MONIES" if the bill contains an appropriation or multiple appropriations in temporary (session) law. If a bill has as its sole purpose the appropriation of monies, the bill title should state that the bill is appropriating monies and name the agency or fund receiving the appropriation. For example, "APPROPRIATING MONIES TO THE DEPARTMENT OF LAW". Transfers, reductions, distributions, allocations and specified or permissive uses of monies are also appropriations and should be included in the bill title as "APPROPRIATING MONIES". Note that appropriations made in statutory sections are not included in the bill title as "APPROPRIATING MONIES". Rather, statutory sections that include appropriations are listed in the bill title as amended or added sections.
- "RELATING TO...." This should be a single phrase containing a general statement of the single subject of the bill (art. IV, part 2, § 13, Constitution of Arizona). Since this is a statement of a subject, do not use a verb. (For example, use "RELATING TO SCHOOL BOARD ELECTIONS" rather than "RELATING TO ELECTING SCHOOL BOARDS".) There is no limit to the length of the "relating to" clause, except that it should be a single, brief comprehensive statement. The heading of the existing article or chapter in which the statutory changes are located may be used as an appropriate "relating to" clause. However, it is a best practice to not use a new chapter or article heading being added in that bill unless the subject is already addressed in current statute. If the bill contains only temporary law, the clause may begin with "RELATING TO", "PROVIDING FOR", "ESTABLISHING" or any other appropriate phrase. If the bill contains new temporary law that includes an appropriation, the clause should also include "APPROPRIATING MONIES".

Each phrase in the bill title is separated by a semicolon. The bill title ends with a period.

Title Format

If a bill amends, repeals or adds statutory text, note the change in the title by using the appropriate phrase from the following list:

• AMENDING SECTION(S) _____, ARIZONA REVISED STATUTES;
(Note: This example also applies when the only change is to a section heading in the Uniform Commercial Code (title 47). See § 1-212, A.R.S.)

• AMENDING TITLE ____, ARIZONA REVISED STATUTES, BY ADDING CHAPTER ____;

• AMENDING TITLE ____, CHAPTER ____, ARIZONA REVISED STATUTES, BY ADDING ARTICLE ____;

• AMENDING TITLE ____, CHAPTER ____, ARTICLE ____, ARIZONA REVISED STATUTES, BY ADDING SECTION _____;

• AMENDING SECTION _____, ARIZONA REVISED STATUTES, AS ADDED BY PROPOSITION _____, SECTION _____, ELECTION OF _____;

• REPEALING SECTION(S) _____, ARIZONA REVISED STATUTES;
(Note: Use this example for both a regular repeal and a delayed repeal.)

• REPEALING TITLE ____, CHAPTER ____, ARIZONA REVISED STATUTES;

• REPEALING TITLE ____, CHAPTER ____, ARTICLE ____, ARIZONA REVISED STATUTES;

Note: If a specific version of a statute is being amended or repealed, cite that version as, for example, "AMENDING (OR REPEALING) SECTION _____, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS ____, CHAPTER ____, SECTION _;"

If a bill repeals a section, article or chapter and also adds a new section, article or chapter with the same number, use the word "new" in the title as follows:

• REPEALING SECTION 12-1624, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 9, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 12-1624;

• REPEALING TITLE 12, CHAPTER 9, ARTICLE 7, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 7;

• REPEALING TITLE 12, CHAPTER 9, ARIZONA REVISED STATUTES; AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 9;

If a bill amends or repeals previously enacted temporary law, note the change in the title by using the appropriate phrase from the following list:

• AMENDING LAWS ____, CHAPTER ____, SECTION ____;

• REPEALING LAWS ____, CHAPTER ____, SECTION ____;

Note: The repeal of a new temporary law in conjunction with the law's enactment is not included in the title.

Note also: Refer to a special session as, for example, "LAWS 2015, FIRST SPECIAL SESSION, CHAPTER 5, SECTION 17".

If a bill transfers or renumbers or transfers and renumbers a section, article or chapter, note the change in the title by using the appropriate phrase from the following list (without noting the section, article or chapter number):

- PROVIDING FOR TRANSFERRING;
- PROVIDING FOR RENUMBERING;
- PROVIDING FOR TRANSFERRING AND RENUMBERING;

Note: Include the appropriate phrase in the bill title only once even if the bill contains multiple transfers or renumberings in one or more sections of the bill.

If a bill amends a section that the bill has also transferred, renumbered or transferred and renumbered, the title must contain the following appropriate phrase for each amended section:

- AMENDING SECTION _____, ARIZONA REVISED STATUTES, AS TRANSFERRED;
- AMENDING SECTION _____, ARIZONA REVISED STATUTES, AS RENUMBERED;
- AMENDING SECTION _____, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED;

Not Included in Title

The following are not noted in the bill title:

- Delayed effective dates and retroactivity.
- Emergency clauses.
- Proposition 105 requirements.
- Proposition 108 requirements.
- Conditional enactments.
- Conditional repeals.
- Heading changes or repeals (of a statutory title, chapter or article).
- New temporary laws, unless the temporary law is the only provision in the bill.

EXHIBIT C

← **Tweet**



Senator Kelly Townsend
@AZKellyT



I will not be able to vote for the education budget bill with a provision that gives authority to school boards to mandate masks on our kids. Amend it out.

8:56 AM · May 25, 2021 · Twitter for Android

113 Retweets **7** Quote Tweets **612** Likes



Senator Kelly Townsend
@AZKellyT



Kelly Townsend
Just now ·



Ok, here is the deal. The K-12 budget includes language giving school boards final say regarding masks on kids. I cannot get on board with this, because I believe that parents have the final say. The idea behind the bill was to keep cities and counties from mandating them. It is too late to ammend the bill in today's committee, and they will need my vote when this goes to the floor. I will therefore vote to move this bill forward, but will be a no on the floor unless there is language that puts the decision into the hands of the parent. Something along the lines that a parent can sign an exemption for their child, and the child will not be singled out, shamed, isolated, etc.

11:55 AM · May 25, 2021 · Twitter for Android

12 Retweets 4 Quote Tweets 40 Likes

EXHIBIT D

← **Tweet**



Joseph Chaplik 
@JosephChaplik



In Arizona we have some politicians and school boards who are desperate to bring them back.

With my bill that became law [#HB2770](#), no business will ever have to enforce masks with their customers.

I also wouldn't sign the [#AZBudget](#) until masks were made optional in schools.



Charlie Kirk  @charliekirk11 · Jul 27

No more masks.

12:56 PM · Jul 27, 2021 · Twitter Web App

83 Retweets **9** Quote Tweets **339** Likes

EXHIBIT E



Thread



Bret Roberts @BretRbrts · Jun 24



[#SB1824](#) would not have the Anti-Vax Passport policy in it today if I caved on [#HB2190](#) several weeks ago. It's not exactly the policy I wanted however it's more than what was being proposed at the time. Proud to have stood tall on this issue.



Bret Roberts @BretRbrts · Jun 24



Thank you [@AZKellyT](#) [@LivingstonLD22](#) [@NancyBarto](#) [@AZDavidGowan](#)

For working with me.



EXHIBIT F



NEWS RELEASE

Arizona House of Representatives

Representative Jake Hoffman (R-12)

1700 West Washington • Phoenix, Arizona • 85007

Wednesday, August 11, 2021

FOR IMMEDIATE RELEASE

Statement from Legislative Republicans on School Districts' Refusal to Follow State Law

STATE CAPITOL, PHOENIX – State Representative Jake Hoffman, along with 25 legislative Republicans, issued the following statement on the local Arizona governments refusing to follow state law:

Under Arizona's constitutional form of government, local governments do not have the authority or power to usurp state law simply because they disagree, yet that is precisely the kind of illegal activity in which many local governments are presently engaged. The Arizona legislature, with the Governor concurring, very intentionally enacted the laws at hand to protect Arizonans and Arizona children from the threat of government mandating them to wear a mask or be injected with a vaccine. Additionally, the legislature very thoughtfully attached a retroactivity clause to the law, so that there would be clear and consistent application of the statute for families and children throughout Arizona.

It borders on anarchy and destabilizes the very foundation of our society to have local governments effectively refusing to comply with the law. It must not be allowed to stand. Any local government that willfully and intentionally flaunts state law must be held accountable.

We sincerely appreciate the Governor's conversations with us over the last few days and hope to see that result in swift action; however, the window to hold the rogue local governments refusing to follow state law accountable is closing and the people of Arizona's patience is running short.

Stated plainly, the legislature did its job by passing common sense laws to protect the children and students of Arizona from anti-science mask and vaccine mandates, now we are eager to see the executive branch do its job to ensure that those laws are faithfully executed by the various levels of government within this state.

We have called upon the Governor privately, and are now calling upon him publicly on behalf of our constituents, to immediately take the following action:

- 1. Withhold the federal funding currently under the Governor's management from any school district that is non-compliant with state law.**
- 2. Authorize temporary Empowerment Scholarship Accounts (ESAs) for all students trapped within any school district that is non-compliant with state law.**

3. Send a notice to all families within the boundaries of a school district that is non-compliant with state law empowering them with the following information:
 - a. The retroactive June 30, 2021 effective date of the law prohibiting mask mandates.
 - b. The availability of the newly authorized temporary Empower Scholarship Accounts (item #2 above) and how to take advantage of them.
 - c. The abundance of school choice options afforded to them by state law including, but not limited to, public school open enrollment, public school out of boundary enrollment, public charter school enrollment, Empowerment Scholarship Accounts, micro-schools, learning pods, STO scholarships, online curriculum, and home school opportunities.
4. Initiate legal action against any school district that is non-compliant with state law.

The blatant disregard for the State of Arizona’s authority exhibited by the non-compliant local governments is an affront to the very core of our state and nation’s form of government. A resounding message must be delivered to any local government or subdivision of the state considering defying state law—lawlessness will not be tolerated.

I, and my colleagues identified below, call on Governor Ducey in the strongest of terms to immediately take the action outlined above to address this gross miscarriage of governance by local Arizona governments.

Signed,

Representative Jake Hoffman
Speaker Pro Tempore Travis Grantham
House Majority Whip Leo Biasiucci
Representative Brenda Barton
Representative Walt Blackman
Representative Shawna Bolick
Representative Judy Burges
Representative Joseph Chaplik
Representative John Fillmore
Representative Mark Finchem
Representative Steve Kaiser
Representative Quang Nguyen
Representative Becky Nutt

Representative Jacqueline Parker
Representative Beverly Pingerelli
Representative Bret Roberts
Representative Justin Wilmeth
Senate Majority Whip Sonny Borrelli
Senator Nancy Barto
Senator Sine Kerr
Senator David Livingston
Senator J.D. Mesnard
Senator Warren Petersen
Senator Wendy Rogers
Senator Kelly Townsend
Senator Michelle Ugenti-Rita

Jake Hoffman is a Republican member of the Arizona House of Representatives serving Legislative District 12, encompassing Gilbert & Queen Creek, and parts of Pinal County.

###

EXHIBIT G



BROPHY

A Catholic, Jesuit School for Young Men

From the Principal's Office

August 4, 2021

Dear Brophy Community,

This week all school offices reopened and campus is buzzing with preparations as we look forward to welcoming our students back to school. Orientation is next Wednesday with classes beginning on Thursday. You can find back-to-school details [here](#).

Over the past months, as we've planned for the reopening of school, we've established priorities that have guided the COVID protocols we will adopt to start this new year, all under the banner of keeping our students, faculty, and staff safe and healthy. Our first priority is to have all students and teachers on campus, in the classroom, for in-person learning. While I'm proud of the way our community navigated the challenges of last year, we are returning to a fully in-person environment this year — there will be no hybrid option for students.

Our second priority is to minimize restrictions (such as masks, distancing, and quarantining) while maintaining everyone's health and safety. In order to have a functioning, in-person learning environment and a return to normal activities and gatherings, we need to do what we can to minimize the number of students and teachers sick or in quarantine.

Over the last six months, it has become increasingly clear that the most effective way to contain the spread of the virus is to have a vaccinated community. Therefore, effective September 13, every student, teacher, and staff member will need to have proof of vaccination on file with the school or get tested for COVID regularly. Additionally, effective Monday, August 9, and for the foreseeable future, any student who wishes to participate in overnight retreats or any school-related travel outside of the Phoenix metro area will be required to have proof of vaccine on file.

Below are the back-to-school health protocols for everyone on campus.

- Students should be mindful of their own health, and if they are too sick to come to school, they should stay home and have a parent/guardian [notify the Dean's Office](#). Students out sick with Covid-like illness will need to submit a negative COVID test before returning to campus.
- If a student, or any member of his household, tests positive for COVID, parents must [notify the Dean's Office](#) and further guidance will be provided based on the specific circumstances.
- We will continue to follow CDC guidance for isolation and quarantine. Students who test positive for COVID will be required to isolate at home for 10 days. Unvaccinated

students who are close contacts of a positive COVID case — either a household member or a classmate — will be required to quarantine. The Dean's Office will provide the quarantine timeline, in accordance with public health guidelines.

- When indoors, everyone on campus will need to wear a mask through Friday, September 10 (unless alone in a classroom or office). Masks are optional in all outdoor areas. I realize, and share, the frustration this news might cause vaccinated members of our community. However, in light of the current surge and until we have a better sense of the vaccination rate among students, we will wear masks indoors in order to reduce illness and quarantine. Beginning Monday, September 13, masks will be optional.
- Also beginning on September 13, all community members — students, faculty and staff — will need to have submitted proof of vaccination (through the Resource Board on [myBrophy](#)), or, if not vaccinated, will have to submit negative COVID test results twice weekly. In the coming weeks we will have more information about the process and the timeline for submitting these tests but please understand that locating and scheduling these tests will be the responsibility of each family, not the school. Testing must occur at a lab or pharmacy; at-home test results will not be accepted as they cannot be verified. As time goes on, the frequency of required testing may change depending on the trajectory of local transmission rates.
- Effective Monday, August 9, all students who plan to participate in overnight retreats or school-related travel outside of the Phoenix area must be vaccinated and have proof of vaccination on file.

We believe, and our medical advisory committee concurs, that this plan will enable us to safely return not only to in-person learning but to the activities and gatherings that are such hallmarks of the Brophy experience. We also believe that the current moment presents another opportunity for our community to live our Ignatian mission to be Men and Women for Others.

Last year, our community faithfully wore masks each day not because the mask provided personal protection but because it protected others, and we ask for that same kind of care and diligence when it comes to getting vaccinated. Although we know that young people are less likely to suffer serious effects from COVID, they can be carriers of the virus and can spread it to vulnerable members of our community. In an interview earlier this year, Pope Francis said, "I believe that morally everyone must take the vaccine. It is the moral choice because it is about your life but also the lives of others."

I look forward to having our students back on campus and to the incomparable energy that comes with it! Thank you for entrusting us with the education of your sons, and their safe-keeping while they are here on campus. These responsibilities inform every decision we make.

AMDG,



Bob Ryan
Principal

[EN ESPAÑOL](#)

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12 **ARIZONA SUPERIOR COURT**

13 **MARICOPA COUNTY**

14 ARIZONA SCHOOL BOARDS) No. CV2021-012741
15 ASSOCIATION, INC., an Arizona nonprofit)
corporation, et al.,) **MOTION FOR PRELIMINARY**
16) **INJUNCTION**
17 Plaintiffs,)
18 v.) (Tier 2)
STATE OF ARIZONA, a body politic,)
19 Defendant.) (Expedited Consideration Requested)
20) (Assign to the Hon. Katherine Cooper)
21)

1 ***“Due to the circulating and highly contagious Delta variant, CDC recommends universal***
2 ***indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12***
3 ***schools, regardless of vaccination status.”***

~ Centers for Disease Control and Prevention (August 5, 2021)

4 ***“I’m not an attorney, but it seems cut and dried. What I find especially egregious***
5 ***were all the bills that died and came back in the budget.”***

~ Sen. Paul Boyer R-Glendale¹

6 **Introduction**

7 The Arizona Constitution protects our representative democracy in two critical ways. It
8 requires that laws passed by the Legislature: (1) cover only one subject; and (2) give adequate
9 notice of the bill’s contents in the title. Ariz. Const. art. IV, pt. 2, § 13.

10 Yet in the closing days of the 2021 legislative session, the Legislature ignored the clear
11 dictates of our Constitution, and crammed a hodgepodge of substantive law provisions into what
12 are known as “budget reconciliation” bills. In doing so, the Legislature ignored not only the
13 Constitution, but also explicit and repeated rulings of the Arizona Supreme Court, which caution
14 that lumping such unrelated provisions “in the same bill tends to undermine the legislative
15 process by stifling valuable debate within government’s most important forum of persuasion and
16 policymaking, the legislature.” *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 38 (2003).

17 The Legislature has disregarded these constitutional limits. First, they passed three bills
18 (HB2898, SB1824, and SB1825) with titles claiming that the contents of the act relate to “budget
19 reconciliation,” yet the contents of each bill include substantive policy provisions that plainly
20 are not related to “budget reconciliation” and are not tied to general appropriations as set forth
21 in the “feed” bill. They also passed a bill (SB1819) with a title claiming that its contents relate
22 to “budget procedures” and “budget reconciliation,” but it likewise includes substantive policy

24 ¹ Pitzl, Mary Jo, *Mask mandates, election changes don’t belong in budget bill lawsuit claims*,
25 The Ariz. Republic, Aug. 13, 2021 (<https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/>).
26

1 legislation that has nothing to do with the budget. Second, SB1819 covers a hodgepodge of
2 completely unrelated subjects in violation of the single subject rule. The medley of laws in
3 SB1819 are precisely the type of “log-rolling” the single subject rule is intended to prevent.
4 *Arizona Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 30 (2017). The Court should
5 enjoin these laws, which undermine our democracy.

6 One of the so-called budget reconciliation bills (HB2898) also blatantly violates
7 Arizona’s equal protection clause under Art. II, section 13 of the Arizona Constitution. HB2898
8 bans all public school districts and charter schools – but not private schools – from requiring
9 students and staff to wear masks in school to protect against the spread of COVID-19. This
10 arbitrary distinction unfairly discriminates against Arizona’s public district and charter school
11 students as compared to their private school peers about their right to a safe education, a
12 fundamental right under Arizona law.

13 Worse yet, the Legislature passed these unconstitutional bills prohibiting COVID-19
14 mitigation measures while Arizona is firmly in the grips of the deadly Delta Variant of the
15 pandemic. Without the ability to impose proven, science-based safety measures, students and
16 teachers will get sick, and some may die. Unless the Court enjoins these dangerous laws,
17 Plaintiffs and all Arizonans will suffer irreparable harm.

18 **Background**

19 **I. The Title and Single Subject Dictates of the Constitution.**

20 Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed by the
21 Legislature “shall embrace but one subject and matters properly connected therewith, which
22 subject shall be expressed in the title[.]” This provision has two distinct constitutional mandates:
23 (1) legislation may only embrace one subject, and (2) the subject of the legislation must be
24 properly addressed in the title of the act.

1 **A. The title requirement.**

2 The title requirement in Article IV, part 2, § 13 “was designed to enable legislators and
3 the public upon reading the title to know what to expect in the body of the act so that no one
4 would be surprised as to the subjects dealt with by the act.” *State v. Sutton*, 115 Ariz. 417, 419
5 (1977) (quotations omitted). The “act’s title need not be a synopsis or a complete index of the
6 act’s provisions,” *Hoyle v. Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App.
7 1989), but the “title must be worded so that it puts people on notice as to the contents of the act,”
8 *Sutton*, 115 Ariz. at 419. A title may not “mislead” but must fairly “apprise legislators, and the
9 public in general, of the subject matter of the legislation.” *Am. Estate Life Ins. Co. v. State, Dept.*
10 *of Ins.*, 116 Ariz. 240, 242 (App. 1977) (citation omitted).

11 When the title of an amendatory act “particularizes some of the changes to be made by
12 the amendment[s], *the legislation is limited to the matters specified and anything beyond them*
13 *is void, however germane it may be to the subject of the original act.*” *Hoyle*, 161 Ariz. at 230
14 (emphasis added).

15 **B. The single subject rule.**

16 The “single subject rule” of the Arizona Constitution, Art. 4, Pt. 2, § 13, provides that
17 “[every act shall embrace but one subject and matters properly connected therewith.” The rule
18 “was intended to prevent the pernicious practice of ‘logrolling.’ . . . A bill that deals with
19 multiple subjects creates a serious ‘logrolling’ problem because an individual legislator ‘is thus
20 forced, in order to secure the enactment of the proposition which he considers the most
21 important, to vote for other of which he disapproves.’” *Bennett*, 206 Ariz. at 528 ¶ 37; *Kiley*, 242
22 Ariz. at 541 ¶ 30. For purposes of the single subject rule, the “subject” of legislation includes
23 “all matters having a logical or natural connection.” *Litchfield Elementary Sch. Dist. No. 79 of*
24 *Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980) (“[A]ll matters treated of should fall
25 under some one general idea, be so connected with or related to each other, either logically or in
26 popular understanding, as to be parts of, or germane to, one general subject.”).

1 **II. The Budget Reconciliation Bills.**

2 Before analyzing why each of the budget reconciliation bills (“BRBs”) violates either or
3 both of the requirements of Article 4, Pt. 2, Section 13, it is helpful to understand the intended
4 and appropriate use of BRBs.

5 **A. “Budget reconciliation” bills are necessary because the Constitution**
6 **prohibits putting substantive law in the general appropriations bill.**

7 When the Legislature adopts a budget each year, a key part of the process involves the
8 appropriation of money. Specifically, each year the Legislature enacts a general appropriations
9 bill, which sets forth the many appropriations the Legislature makes for the upcoming fiscal year.
10 This general appropriations bill (also commonly referred to as the “feed bill”) is governed by a
11 separate provision of our constitution, Art. IV., Pt. 2, § 20, which mandates that “The general
12 appropriation bill shall embrace nothing but appropriations All other appropriations shall
13 be made by separate bills, each embracing but one subject.” (Emphasis added.) Arizona courts
14 have long held, “the general appropriation bill is not in the true sense of the term legislation; it
15 is, as the language implies, merely a setting apart of the funds necessary for the use and
16 maintenance of the various departments of the state government” *Caldwell v. Board of*
17 *Regents of University of Arizona*, 54 Ariz. 404, 408 (1939) (citations omitted).

18 Arizona law is clear that the Legislature may not include general, substantive legislation
19 in the appropriations bill, and “any attempt at any other legislation in the bill is void.” *Id.* As the
20 supreme court presciently explained, “[i]f the practice of incorporating legislation of general
21 character in an appropriation bill should be allowed, then all sorts of ill conceived, questionable,
22 if not vicious, legislation could be proposed with the threat, too, that if not assented to and passed,
23 the appropriations would be defeated.” *Id.*

24 Thus, under our Constitution, any changes in substantive law that are necessary to
25 “effectuate” appropriations in the budget must be made in separate bills. Put differently, BRBs
26 exist for the specific purpose of providing the substantive law that is necessary to implement or

1 carry out the appropriations made in the general appropriations bill. [See Declaration of Chris
2 Kotterman, attached as Ex. 1; Declaration of David Lujan, attached as Ex. 2]

3 To illustrate, a substantive change to the computation of Average Daily Membership for
4 schools or a clarification of some funding formula may be included in a BRB because these
5 provisions have an impact on the flow of funding to school districts and charter schools.
6 [Kotterman Decl. ¶ 21]. And another example, the “environment” BRB passed this session
7 includes a provision describing how the state forester will pay claims to rural fire districts,
8 “subject to legislative appropriation.” Section 37 of the general appropriations bill in turn
9 includes a \$2,500,000 appropriation for this purpose. The Department of Forestry section in the
10 Appropriations Report explains how the BRB effectuates this line item in the budget: “Pursuant
11 to a provision in the Environment Budget Reconciliation Bill (BRB), these funds are available
12 to assist fire districts with a population of less than 5,000, for expenses incurred providing
13 emergency medical services on federal land.” Ariz. FY22 Approp. Rep. at 198,
14 <https://www.azleg.gov/jlbc/22AR/FY2022AppropRpt.pdf> (last visited Aug. 18, 2021).²

15 The legislature knows this is the appropriate function of the BRBs. According to the
16 Legislative Council’s Arizona Legislative Manual, BRBs “are used for statutory adjustments
17 that must be implemented to carry out the adopted budget.” [Compl. Ex. A] Senate fact sheets
18 from this legislative session also warn: substantive law changes are not permissible in the general
19 appropriations bill, but “it is often necessary to make statutory and session law changes *to*
20 *effectuate the budget*. Thus, separate bills called budget reconciliation bills (BRBs) are
21 introduced to *enact these provisions*.” *E.g.*, HB2898 Senate Fact Sheet, 55th Leg., 1st Reg. Sess.
22 (Ariz. June 30, 2021) <https://www.azleg.gov/legtext/55leg/1R/summary/S.2898>
23

24
25 _____
26 ² Notably, in the Appropriations Report, there are no line items in the budget or BRB descriptions
tying the challenged provisions in this lawsuit to an appropriation.

1 [APPROP ASPASSEDCOW.pdf](#) (emphasis added). A true and correct excerpt is attached as Ex.
2 3.

3 Yet here, the Legislature stuffed into the various BRBs provisions that have nothing to
4 do with “effectuating the appropriations in the budget.” Rather, the Legislators crammed into
5 the BRBs laws prohibiting mask mandates and other COVID mitigation measures, as well as
6 enacting numerous other pet interests of various legislators that have nothing to do with “budget
7 reconciliation.” In doing so, the Legislature violated the clear dictates of article IV, part 2, § 13.

8 **B. All of the Challenged BRBs Contain Provisions that are Not “Properly
9 Reflected in the Title,” and SB1819 Contains a Hodgepodge of Completely
10 Unrelated Subjects.**

11 **1. HB2898 (kindergarten through grade twelve budget reconciliation).**

12 HB2898’s title is: “an act amending [listing approximately 100 statutes by number only];
13 appropriating monies; *relating to kindergarten through grade twelve budget reconciliation.*”
14 (Emphasis added.) Despite the title limiting the scope of the act’s contents to provisions “budget
15 reconciliation,” HB2898 includes substantive legislation that has nothing to do with effectuating
16 or implementing the budget.

17 First, Section 12 prohibits “a county, city, town, school district governing board or charter
18 school governing body” – but not private schools – from requiring students and staff to wear
19 masks or to get a COVID-19 vaccine. [Compl. ¶ 53]

20 Second, Section 21 prohibits “a teacher, administrator or other employee of a school
21 district, charter school or state agency who is involved with students and teachers in grades
22 preschool through the twelfth grade” from teaching curriculum “that presents any form of blame
23 or judgment on the basis of race, ethnicity or sex.” This section goes on to vaguely prohibit
24 teaching various “concepts,” including the idea that an individual “should feel discomfort, guilt,
25 anguish, or any other form of psychological distress because of the individual’s race, ethnicity
26

1 or sex.” And it authorizes “disciplinary action” and enforcement action against a teacher who
2 violates this section. [Compl. ¶¶ 57-58]

3 Third, Section 50 of HB2898 authorizes the Attorney General to initiate civil actions
4 against a “public official, employee or agent of this State” who uses public resources to
5 “organize, plan or execute any activity that impedes or prevents a public school from operating
6 for any period of time,” and against any teacher or other employee “whose violation of [Section
7 21] resulted in an illegal use of public monies.” [Compl. ¶ 59]

8 **2. SB1825 (budget reconciliation for higher education).**

9 SB1825’s title is “an act amending [listing approximately 12 statutes by number only];
10 appropriating monies; *relating to budget reconciliation for higher education.*” (Emphasis
11 added.) Consistent with this title, the stated purpose of SB1825 is to “[m]ake[] statutory and
12 session law changes relating to higher education necessary to implement the FY 2022 state
13 budget.” SB1825 Senate Fact Sheet, 55th Leg., 1st Reg. Sess. (Ariz. June 22, 2021)
14 https://www.azleg.gov/legtext/55leg/1R/summary/S.1825APPROP_ASPASSED_COW.pdf. A
15 true and correct excerpt is attached as Ex. 4. Despite the title limiting the scope of the act’s
16 contents to provisions “relating to budget reconciliation for higher education,” SB1825 includes
17 substantive legislation that is not necessary to effectuate or implement the budget.

18 Specifically, in Section 2 (A.R.S. § 15-1650.05), subject to limited exceptions,
19 “universities and community colleges may not require that a student obtain a COVID-19
20 vaccination or show proof of receiving a COVID-19 vaccination or implement other mitigation
21 measures that differentiate based on vaccine status.

22 **3. SB1824 (health budget reconciliation).**

23 SB1824’s title is “an act amending [listing approximately 21 statutes by number only];
24 appropriating monies; *relating to health budget reconciliation.*” (Emphasis added.) Consistent
25 with this title, the stated purpose of SB1824 is to “[m]ake[] statutory and session law changes
26 relating to health necessary to implement the FY 2022 state budget.” SB1824 Senate Fact Sheet,

1 55th Leg., 1st Reg. Sess. (Ariz. June 22, 2021), https://www.azleg.gov/legtext/55leg/1R/summary/S.1824APPROP_ASPASSED_COW.pdf. A true and correct excerpt
2 is attached as Ex. 5. Despite the title limiting the scope of the act’s contents to provisions
3 “relating to health budget reconciliation,” SB1824 includes substantive legislation that has
4 nothing to do with effectuating or implementing the budget.
5

6 First, Section 12 provides that an immunization that has an FDA emergency use
7 authorization cannot be required for school attendance, and that immunizations cannot be
8 required for school attendance unless set forth in a rule by the Director of the Department of
9 Health Services. [Compl. ¶ 67]

10 Second, Section 13 prohibits the State or any city, town, or county “from establishing a
11 COVID-19 vaccine passport,” or requiring that any person “be vaccinated for COVID-19” or
12 that any business obtain “proof of the COVID-19 vaccination status of any patron entering the
13 business establishment.” [Compl. ¶ 68]

14 **4. SB1819 (budget procedures).**

15 SB1819’s title is “an act amending [listing approximately 31 statutes by number only];
16 appropriating monies; *relating to state budget procedures.*” (Emphasis added.) Consistent with
17 this title, SB1819’s stated purpose is to “[m]ake[] statutory and session law *changes relating to*
18 *budget procedures* necessary to implement the FY 2022 state budget.” SB1819 Senate Fact
19 Sheet, 55th Leg., 1st Reg. Sess. (Ariz. June 23, 2021), https://www.azleg.gov/legtext/55leg/1R/summary/S.1819APPROP_ASPASSED_COW_REVISED.pdf. A true and correct
20 excerpt is attached as Ex. 6. Despite the title limiting the scope of the act’s contents to provisions
21 “relating to state budget procedures,” SB1819 includes substantive policy legislation that has
22 nothing to do with budget procedures.
23

24 For example, Section 5 sets forth various requirements for “fraud countermeasures” used
25 in ballots. In Section 33, the Legislature grants the Attorney General the authority to defend
26

1 election laws and “speak[] for this state” in election litigation “through January 2, 2023.”
2 [Compl. ¶¶ 71-73]

3 Section 35 provides that the Secretary of State must request that the United States election
4 assistance commission include Arizona’s proof of citizenship instructions on the federal voter
5 registration form. In Section 39, the bill prohibits a “county, city or town” from adopting “any
6 order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts
7 private businesses, schools, churches or other private entities,” including mask requirements.

8 Section 47 establishes a “special committee” on the Senate’s “audit” of the 2020 General
9 Election in Maricopa County.

10 Even more, SB1819 also violates the single subject rule, because it contains legislation
11 on multiple, unrelated subjects that have no logical connection to each other. Among other
12 subjects, – and in addition to those described above – SB1819 covers: dog racing permitting;
13 requirements for the Arizona Game and Fish Dept. to assist with voter registration; amending
14 the definition of a “newspaper” under Arizona law; local authority to pass COVID mitigation
15 measures; amending the study committee on missing and indigenous peoples; the creation of a
16 “special committee” to review the election “audit”; and requirements for the agreement of unit
17 owners to terminate a condominium.

18 It is difficult to conceive of more blatant violations of the requirements of both the title
19 and the single subject requirements of the Arizona Constitution.

20 **Argument**

21 A party seeking a preliminary injunction must establish that (1) there is a strong
22 likelihood of success at trial on the merits, (2) the possibility of irreparable harm that is not
23 remedied by monetary damages, (3) the balance of hardships tips in its favor, and (4) public
24 policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Courts consider the
25 likelihood of success on the merits and the possibility of irreparable harm on a sliding scale, and
26 they will grant an injunction when the balance of hardships tips sharply in the movant’s favor

1 with less likelihood of success, and vice versa. *Smith v. Ariz. Citizens Clean Elections Comm’n*,
2 212 Ariz. 407, 411 ¶ 10 (2006). Plaintiffs are entitled to a preliminary injunction under either
3 formulation of the rule. They have a strong likelihood of the success on the merits, and the
4 consequences of these unconstitutional laws will cause an irreparable hardship that tips strongly
5 in favor of Plaintiffs and the public.

6 **III. Plaintiffs Are Likely to Succeed on Their Claims.**

7 While Section 13’s single subject rule and title requirement are “interpreted liberally so
8 as not to impede or embarrass the legislature in its business,” they shouldn’t be interpreted “so
9 foolishly liberal as to render the constitutional requirements nugatory.” *Litchfield Elementary*,
10 125 Ariz. at 224 (quotations omitted). Here, the violations of Section 13 are egregious. To uphold
11 these laws would render the crucial protections in the Constitution “nugatory.”

12 **A. The BRBs violate the title requirement.**

13 Arizona courts have repeatedly struck down legislative acts that violate the title
14 requirement of Article IV, part 2, § 13. *See, e.g., State v. Sutton*, 115 Ariz. 417, 419 (1977);
15 *White v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209 (1976); *Am. Estate Life Ins. Co. v. State*,
16 *Dept. of Ins.*, 116 Ariz. 240 (App. 1977). As the Supreme Court in *Sutton* explained, the title
17 provision “was designed to enable legislators and the public upon reading the title to know what
18 to expect in the body of the act so that no one would be surprised as to the subjects dealt with by
19 the act.” *Sutton*, 115 Ariz. at 419 (quotation omitted). “By confining the legislation to the subject
20 contained in the title, neither the members of the legislature nor the people can be misled to vote
21 for something not known to them or intended to be voted for.” *White*, 113 Ariz. at 212. While
22 the “act’s title need not be a synopsis or a complete index of the act’s provisions,” *Hoyle v.*
23 *Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App. 1989), the “title must be
24 worded so that it puts people on notice as to the contents of the act.” *White*, 113 Ariz. at 211.³
25

26 ³ The Legislature is well-aware that the title requirement in Section 13 applies to all legislation
it passes, including BRBs. [Compl. Ex. B at 9] *See* 2020 Bill Drafting Manual at 9,

1 “The courts cannot enlarge the scope of the title; they are vested with no dispensing power. The
2 Constitution has made the title the conclusive index to the legislative intent as to what shall have
3 operation. It is no answer to say that the title might have been made more comprehensive, if in
4 fact the legislature have not seen fit to make it so.” *White*, 113 Ariz. at 212 (citations omitted).

5 Here, the BRB’s titles list various statutes that are amended, and then states the
6 bills/amendments are for “budget reconciliation.” For example, HB2898 lists *over 100 statutes*
7 *that will be amended*, but says that the bill is “relating to kindergarten through grade twelve
8 budget reconciliation.” This is crucial because, when the title of an amendatory act
9 “particularizes some of the changes to be made by the amendment, the legislation is limited to
10 the matters specified and anything beyond them is void, however germane it may be to the
11 subject of the original act.” *Hoyle*, 161 Ariz. at 230; *Sutton*, 115 Ariz. at 419-20. Here, by stating
12 that the measures related “to budget reconciliation,” the title “particularizes some of the changes
13 to be made” and must “be limited to the matters specified.” Anything beyond that is “void.”

14 In similar circumstances the courts have struck down as void any provisions that are not
15 set forth in the narrative description, even where specific statute numbers were referenced. For
16 example, in *American Estate*, the title of the statute under review explicitly identified a series of
17 statutes that would be amended, and also explained in narrative terms what the act addressed.
18 116 Ariz. at 242. The narrative terms did not, however, describe a new tax that appeared in the
19 act. The court held that a title may not “mislead” but must fairly “apprise legislators, and the
20 public in general, of the subject matter of the legislation.” *Id.* The court rejected the State’s
21 argument that the title included the term “insurance,” which was broad. *Id.* Instead, it struck
22 down the law as unconstitutional because “the title to the act fails to give adequate notice within
23

24 https://www.azleg.gov/alisPDFs/council/2021-2022_bill_drafting_manual.pdf (noting that the
25 “title is a constitutional requirement of every bill,” and it “must state the subject of the
26 legislation with sufficient clarity to enable persons reading the title to know what to expect in
the body of the act.”).

1 the contents of the act that there is a new tax placed on ‘orphan premiums.’” *Id.* at 243. *See also*
2 *Sutton*, 115 Ariz. at 419-20 (where title of statute listed some changes to credit card theft statute
3 but not others, court struck down provisions not referenced in title); *State Board of Control v.*
4 *Buckstegge*, 18 Ariz. 277 (1916) (even giving liberal construction, title “should not be so meager
5 as to mislead or tend to avert inquiry into the contents thereof”; court struck down statute where
6 title said “providing for old age and mothers’ pension and making appropriation therefor”
7 because title provided “no suggestion” that bill also abolished existing poor houses).

8 Comments from numerous legislators make clear that inclusion of substantive policy
9 changes in the BRBs was not to effectuate the budget (i.e. “budget reconciliation”), but were
10 required to “buy” their votes for the entire budget. [Kotterman Decl. ¶ 16; *see also* Compl. ¶¶
11 89-92, Exhs. C-E; *see also* Complaint at ¶¶ 89-93 (collecting public statements of legislators)]
12 One legislator recently conceded that the practice is illegal: “Sen. Paul Boyer, R-Glendale,
13 questioned how the Legislature would defend itself when, in his view, the process so clearly
14 violates the state Constitution.” Pitzl, Mary Jo, *Mask mandates, election changes don’t belong*
15 *in budget bill lawsuit claims*, The Ariz. Republic, Aug. 13, 2021
16 [https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-](https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/)
17 [mask-law-covid-19-challenged-court-education-coalition/8119478002/](https://www.azcentral.com/story/news/local/arizona-education/2021/08/13/arizona-school-mask-law-covid-19-challenged-court-education-coalition/8119478002/).

18 There can be no doubt that the challenged provisions—most of which relate to COVID
19 mitigation policies—do not relate to “budget reconciliation.” Yet that is the misleading title that
20 was slapped on each of the BRBs. Each of the BRBs violates the title requirement of the
21 Constitution. For example:

- 22 • The title of HB2898,⁴ provides no suggestion that the bill would: (1) ban public schools
23 from implementing mask mandates; or (2) ban teaching vague concepts relating to race
24 and providing penalties and enforcement mechanisms.

25 ⁴ The inclusion of the words “appropriating moneys” does not save these provisions. None of
26 these provisions appropriate money. As Judge Warner recently ruled regarding the mask
mandate: “The statute is not an appropriation measure, it is a regulation of school districts.”

- 1 • The title of SB1825, provides no notice that the bill would prohibit universities and
2 community colleges from requiring vaccinations and alternative COVID mitigation
3 measures for those who were unvaccinated.
- 4 • The title of SB1824, provides no suggestion that it would include provisions (1) providing
5 that an immunization that has an FDA emergency use authorization cannot be required
6 for school attendance; (2) that immunizations cannot be required for school attendance
7 unless set forth in a rule by the Director of the Department of Health Services; or (3) that
8 no city or town can establish “a COVID-19 vaccine passport” or require business to obtain
9 proof of vaccination status.
- 10 • The title of SB1819, provides no notice that it would include provisions (1) requiring the
11 Secretary of State to give access to the statewide voter registration database to any “person
12 or entity that is designated by the legislature” to review voters who are registered to vote
13 for federal only races, (2) that it would establish “fraud countermeasures” to be used in
14 paper ballots; (3) or make any of the other changes itemized in § II (B)(4) above.

15 Each of these measures violates the Constitution’s title requirement, and each of the
16 offending provisions should be declared unconstitutional and enjoined from taking effect. Ariz.
17 Const. art. IV, pt. 2, § 13. *See Sutton*, 115 Ariz. at 419.

18 **B. SB1819 also violates the single subject rule.**

19 The single subject rule mandates, that “[e]very act shall embrace but one subject and
20 matters properly connected therewith.” Ariz. Const. art. 4, Pt. 2, § 13. The “subject” of legislation
21 includes “all matters having a logical or natural connection.” *Litchfield Elementary*, 125 Ariz. at
22 224 (citation omitted). Thus, to comply with the single subject rule, “all matters treated of should
23 fall under some one general idea, be so connected with or related to each other, either logically
24 or in popular understanding, as to be parts of, or germane to, one general subject.” *Id.*; *see also*
25 *Hoffman v. Reagan*, 245 Ariz. 313, 317 ¶ 16 (2018) (the single subject rule requires that a bill’s
26 provisions be reasonably related).

As explained above, SB1819, the “budget procedures” BRB, blatantly violates this
constitutional mandate. It is a hodgepodge of completely unrelated subjects, from dog racing

Hester v. Phoenix Union High Sch. Dist. et al., Maricopa County Superior Court No. CV2021-012160, Aug. 16, 2021 Minute Entry. A true and correct copy is attached as Ex. 7.

1 permitting to voter registration; the Governor’s emergency powers; the definition of a
2 “newspaper”; local authority to pass COVID-19 mitigation measures; the study committee on
3 missing and indigenous peoples; the practices of social media platforms and internet search
4 engines relating to political contributions; the creation of a “special committee” to review the
5 Maricopa County election “audit”; requirements for the agreement of unit owners to terminate a
6 condominium; and so on. None of these subjects have any logical connection to each other or
7 “fall under some one general idea.” *Litchfield Elementary*, 125 Ariz. at 224.

8 Like the provisions in *Litchfield Elementary* relating to an “executive aircraft for the
9 Department of Public Safety, a mobile dental clinic to be operated by the Dental Health Bureau,
10 an apparently operational grant to the Board of Dental Examiners, an historical data based cross-
11 reference index for the Incorporating Division of the Corporation Commission, and a capital
12 appropriation to the Department of Corrections for a variety of purposes,”
13 SB1819’s provisions simply have no “realistic commonality.” *Id.* at 225. Indeed, the Arizona
14 Supreme Court has noted – without deciding because the parties did not raise the issue – that
15 similar BRBs appeared to violate “the single subject rule in the legislative process.” *Bennett*, 206
16 Ariz. at 528 ¶ 39 & n. 9 (describing similar hodgepodge in a reconciliation bill).

17 SB1819 also undermines the purpose of the single subject rule. This constitutional is
18 “designed to prevent the evils of omnibus bills, surreptitious and ‘hodgepodge’ legislation.”
19 *Litchfield Elementary*, 125 Ariz. at 223–24. For that reason, when a bill violates the single
20 subject rule, it is “infected by reason of the combination of its various elements rather than by
21 any invalidity of one component,” so “the entire act must fall.” *Id.* at 226.

22 “A bill that deals with multiple subjects creates a serious ‘logrolling’ problem because an
23 individual legislator is thus forced, in order to secure the enactment of the proposition which he
24 considers the most important, to vote for others of which he disapproves.” *Bennett*, 206 Ariz. at
25 528 ¶ 37 (quotations and citations omitted). That is exactly what the Legislature did here.
26

1 Republicans hold a majority by only one vote in each chamber of the Legislature, and
2 they were having a difficult time gathering enough votes to pass the budget this year. To put
3 pressure on the Legislature to pass the budget, Governor Ducey vetoed 22 bills, and announced
4 that he would not sign any legislation until the Legislature passed the budget. Running out of
5 time, lawmakers shoved a hodgepodge of substantive policy legislation into the budget to get
6 the votes they needed.

7 Never before has the legislature so ignored the normal process and procedure for enacting
8 laws as they did this session. [Lujan Decl. ¶¶ 16-19]. Lawmakers openly admitted that they were
9 withholding their votes on the budget unless they could include their own pet policies, including
10 ones that already died during the session. [Kotterman Decl. ¶ 16; Compl. ¶¶ 89-95] That is
11 textbook “logrolling,” and the very evil the single subject rule is designed to prevent.⁵

12 The Court should enforce the dictates of the Arizona Constitution before article IV, part
13 2, § 13 is rendered wholly meaningless.

14 **C. HB2898 violates public school students’ equal protection rights.**

15 The ban on mask mandates also unlawfully discriminates against Arizona’s public and
16 charter school students in violation of article II, section 13 of the Arizona Constitution. That
17 provision provides that “[n]o law shall be enacted granting to any citizen, class of citizens, or
18 corporation . . . which, upon the same terms, shall not equally belong to all citizens or
19 corporations.” No matter what test the Court applies, HB2898 violates equal protection.

20 When a statute treats two classes differently in a way that burdens a “fundamental right,”
21 courts “subject it to strict scrutiny and will only uphold it if it is necessary to promote a
22 compelling state interest.” *Big D Const. Corp. v. Ct. of Appeals for State of Ariz., Div. One*, 163
23 Ariz. 560, 566 (1990); *see also Charfauros v. Bd. of Elections*, 249 F.3d 941, 952 (9th Cir. 2001)

24
25 _____
26 ⁵ If SB1819 is considered an appropriations bill, it fails for the same reason. Ariz. Const. art. IV,
pt. 2, § 20; *Litchfield*, 125 Ariz. at 226.

1 (courts apply strict scrutiny to a statutory classification that “significantly interferes with the
2 exercise of a fundamental right”) (quoting *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978)).

3 Education is a fundamental right in Arizona. *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973);
4 *Magyar By & Through Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423, 1442 (D. Ariz.
5 1997) (“[T]he Arizona Constitution establishes education as a fundamental right of students
6 between the ages of six and twenty-one years.”) (citing *Shofstall*).⁶ Indeed, an entire article in
7 the Arizona Constitution covers “education” (Article XI), including the requirement that the
8 Legislature “provide for the establishment and maintenance of a general and uniform public
9 school system.” Ariz. Const. art. XI, § 1. Other states with express constitutional provisions like
10 Arizona’s have held that education is a fundamental right under state law. *See, e.g., Claremont*
11 *Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997). A basic component of the fundamental
12 right to education, of course, is the right to a safe educational setting. *Cf. Abbeville Cty. Sch.*
13 *Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (finding that “adequate and safe facilities” were
14 minimum requirements for similar constitutional provision).

15 To be sure, not every distinction between public and private school students regarding
16 education will trigger strict scrutiny. But when, as here, a law substantially interferes with the
17 right to an education in a reasonably safe setting that complies with CDC and all public health
18 guidance for only one class of students, it can be upheld only if it is necessary to serve a
19 compelling state interest. HB2898’s distinction between Arizona’s public schoolchildren and
20

21 _____
22 ⁶ Though the Supreme Court expressly held in *Shofstall* that education is a fundamental right,
23 *id.* (“We hold that the constitution does establish education as a fundamental right of pupils
24 between the ages of six and twenty-one years.”), the court inexplicably applied the rational basis
25 test to the equal protection claim. But *Shofstall* relied on *San Antonio Indep. Sch. Dist. v.*
26 *Rodriguez*, 411 U.S. 1, 55 (1973), which found that education is not a fundamental right under
the federal constitution. In a subsequent case noting this “conundrum,” Justice Feldman noted
that the court in *Shofstall* simply failed to apply “the proper strict scrutiny analysis.” *Roosevelt*
Elementary Sch. Dist. No. 66 v. Bishop, 179 Ariz. 233, 244 (1994) (Feldman, J., concurring).

1 private schoolchildren regarding their physical safety in school no doubt fails that test.

2 There is simply no conceivable state interest (let alone a compelling one) in forcing public
3 and charter school students into unsafe educational environments, while allowing students who
4 can access private education to get adequate protection.⁷ In the midst of a public health
5 emergency, HB2898 bans evidence-based masking measures for public schoolchildren that
6 reduce transmission of a deadly airborne virus. [See Declaration of Sean Elliott, MD, attached
7 as Ex. 8; Declaration of Cadey Harrel, MD, attached as Ex. 9]. What interest could the State
8 possibly have in prioritizing the health and safety of Arizona’s private school students over
9 public school students? There isn’t one. To the contrary, HB2898 undermines commonly raised
10 government interests, including public safety and preserving local and control.

11 To the extent the State has an interest in giving parents the option whether to take
12 reasonable precautions to protect their own children from COVID-19, distinguishing between
13 public and private school students isn’t necessary to achieve that goal. All children have a right
14 to be physically safe while they attend school, not just students with access to private schools.
15 *Cf. Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969) (law granting the
16 fundamental right to vote in school board elections “to residents on a selective basis” couldn’t
17 survive strict scrutiny).⁸ At bottom, no state interest justifies HB2898’s distinction between the
18 health and safety of children in public and private schools.

19 _____
20 ⁷ Notably, the Legislature includes private schools in other statutes about the physical safety of
21 schoolchildren. *E.g.*, A.R.S. § 15-871 (article governing school immunization requirements
22 applies to public and private schools); A.R.S. § 15-151 (requiring eye protective gear when
students in private or public schools are exposed to certain materials).

23 ⁸ The Supreme Court of California has analogized the fundamental right to education to another
24 fundamental right: the right to vote. *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971). That’s
25 because education and voting “are crucial to participation in, and the functioning of, a
26 democracy,” and “education makes more meaningful the casting of a ballot. More significantly,
it is likely to provide the understanding of, and the interest in, public issues which are the spur
to involvement in other civic and political activities.” *Id.*

1 Even if a rational basis standard applied (it doesn't), Section 12 of HB2898's arbitrary
2 distinction between Arizona's public and private schoolchildren does not have a
3 "conceivable rational basis to further a legitimate governmental interest." *State v. Arevalo*, 249
4 Ariz. 370, 375 ¶ 15 (2020) (quotations omitted). The law irrationally bans reasonable safety
5 measures to protect children from a highly contagious virus, but only in public schools. Again,
6 there is simply no legitimate state interest supporting this unfair and unprincipled distinction. An
7 Arkansas court recently enjoined a similar ban on mask mandates in public schools on equal
8 protection grounds, holding that the law "facially violates the equal protection provisions of
9 Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between
10 minors in public schools and minors in private schools." *McClane et al. v. Arkansas et al.*,
11 Pulaski County Circuit Court, No. 60cv-214692 (Ark. Aug. 6, 2021), [https://
12 wehco.media.clients.ellingtoncms.com/news/documents/2021/08/06/Fox_Mask_Order.pdf](https://wehco.media.clients.ellingtoncms.com/news/documents/2021/08/06/Fox_Mask_Order.pdf) (last
13 visited Aug. 16, 2021). So too here.

14 The Court should declare that HB2898, Section 12 violates equal protection.

15 **IV. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.**

16 **A. Legislature Bans COVID-19 Mitigation in the Face of Public Health Crisis.**

17 Across the country and in Arizona, the number of COVID-19 cases is climbing, including
18 among children. [See Elliott Decl. ¶¶ ; Harrel Decl. ¶¶]. The present surge is a result of the
19 Delta variant, which is far more contagious than the original strains of the virus. [Elliott Decl. ¶
20 3] Alarming, the Delta variant is affecting more and more young individuals, including
21 children. [*Id.*; Harrel Decl. ¶ 6] The Delta variant produces a significantly higher viral load (the
22 amount of virus in a person), especially in the nasopharynx. This leads to more spreading in the
23 air. [Declaration of Jeremy Feldman ¶ 4, attached as Ex. 10] The net effect of this is that a shorter
24 exposure to an infected person is needed to infect others, even with just speaking and breathing.
25 [Harrel Decl. ¶ 6; Feldman Decl. ¶ 4] The viral load peaks during the pre-symptomatic stage of
26

1 the disease, meaning the person spreading the virus is often unlikely to even know they are
2 infected. [Harrel Decl. ¶ 6; Declaration of Ruth Franks Snedecor ¶¶ 3-5, attached as Ex. 11]

3 Not only are more children becoming infected, more are suffering serious illness requiring
4 hospitalization. [Elliott Decl. ¶ 3, 6] More and more children are experiencing significantly
5 symptomatic disease and many pediatric health care centers are becoming overwhelmed with
6 severely ill COVID-19 pediatric patients. [Feldman Decl. ¶ 3] The Delta variant also has now
7 demonstrated increased infectivity from pediatric patients to all others, including susceptible
8 adults. [Elliott ¶ 4] This is a “game changer” that makes children particularly capable of
9 becoming super spreaders, among their peers, their teachers, and their families. *Id.* While
10 vaccines provide significant protection, there are many unvaccinated people in Arizona, and the
11 vaccine provides only partial protection if people have immunodeficiencies or have received
12 immunosuppressive medications. *Id.* ¶6.⁹ There is a growing number of even fully vaccinated
13 people who are infected with the Delta variant in the hospital, and even young, fully vaccinated
14 adults are dying from COVID. [Feldman Decl. ¶ 4] Additionally, children under 12 cannot be
15 vaccinated. Further, among those in the 12 to 20 age group, the vast majority are not vaccinated.
16 [Elliott Decl. ¶ 9]

17 Also, with the Delta variant it has been proven that vaccinated individuals can carry an
18 equal amount of virus in their nasopharynxes as other who are exposed to COVID-19. This
19 means that even fully vaccinated people who are exposed to the Delta variant now pose the same
20 risk of carrying it to susceptible, unvaccinated people (including children) as those who are not
21 vaccinated. [Elliott Decl. ¶ 6; Franks Decl. ¶ 3-4]

22
23 _____
24 ⁹ The fact that vaccines offer significant protection and the best way to protect all those in a
25 community bear directly on the risk of irreparable harm from the unlawful COVID mitigation
26 prohibitions improperly included in the higher education budget reconciliation bill affecting
universities and community colleges (SB1825), the health reconciliation bill (SB1824), and the
budget procedure reconciliation bill (SB1819). [See, e.g., Elliott Declaration at ¶ 6]

1 Alarming, Arizona is the worst, or is among the very worst states in the country in child
2 hospitalizations due to COVID-19, pediatric cases per 100,000 residents, total pediatric deaths,
3 and deaths per capita. [Elliott Decl. ¶ 10; Harrel Decl. ¶ 8; Franks Decl. ¶5]

4 In a recent research report by Dr. Joe Gerald of the University of Arizona, COVID-19
5 rates in Arizona have been increasing for eight straight weeks, signaling that a “substantial surge
6 is imminent in the coming weeks.” *Joe Gerald, MD, Ph.D., Weekly Arizona COVID-19 Data*
7 *Report: Researcher Analyzes Arizona COVID-19 Spread Models for Decision-Makers, Univ. of*
8 *Ariz., Aug. 6, 2021, <https://publichealth.arizona.edu/news/2021/covid-19-forecast-model>. In*
9 *sum, due to the nature of the Delta variant nationally and specifically in Arizona, the risk to and*
10 *by Arizona School-children for an explosion of COVID-19 cases is extreme. [Elliott Decl. ¶ 10]*
11 *And the risk of secondary spread to Arizona communities from infected and exposed,*
12 *unvaccinated school children is also extreme. [Id.]*

13 Importantly, the consequences for those who will be infected and become ill are often not
14 short term problems, even for those who make it through the acute stage of the illness. A large
15 number of those infected will demonstrate symptoms of “long COVID.” This can encompass
16 anything from COVID related heart failure, chronic blood clots, pulmonary disease from damage
17 to lung tissue, brain fog, and depression or other mood disorders. [Harrel Decl. ¶ 5] Even in
18 patients who did not require hospitalization, a very large percentage will experience long COVID
19 symptoms. [Id.] Young people are susceptible to long COVID symptoms. [Id.]

20 **B. The Ability to Implement Mask Mandates and to Use Other COVID**
21 **Mitigation Measures Are Critical to Prevent Irreparable Harm.**

22 Universal masking is a proven public health disease mitigation tool, and is one of the only
23 tools available to protect children. [Harrel Decl. ¶ 7; Feldman Decl. ¶ 5] *The CDC and nearly*
24 *every single public health and medical guiding body recommends universal masking in schools*
25 *and other indoor settings. The “CDC recommends universal indoor masking for all teachers,*
26 *staff, students, and visitors to schools, regardless of vaccination status.” CDC, *Interim Public**

1 *Health Recommendations for Fully Vaccinated People*, July 28, 2021, [https://www.cdc.gov](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html)
2 [/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html). [See also Feldman Decl. ¶ 5]

3 Masks have proven very effective with *no proven harmful effects*. [Elliott Decl. ¶ 7]
4 However, to realize the societal and protective effects of mask-wearing, nearly everyone in that
5 setting must wear a mask. Only with universal masking in schools can all people be protected
6 against acquiring the virus and infecting others. Even if an individual child wears a mask, that
7 protects that child from infecting others. However, if that same, masked child is surrounded by
8 others who are not wearing mass, the risk to the masked child from acquiring COVID-19
9 increases significantly. [Elliott Decl. ¶ 8; Harrel Decl. ¶ 7; Franks Decl. ¶ 6] Simply masking
10 only one child, or even a few, is not effective, since others who are unmasked will continue to
11 spread and become infected with the disease. Critically, those people who are unvaccinated and
12 have risk factors for serious COVID-19 must be protected by everyone around them wearing a
13 mask. [Elliott Decl. ¶ 8] Mask mandates in school are the only accessible, effective, and
14 evidence-proven intervention likely to prevent the expected explosion of Delta variant COVID-
15 19 related to school activities. [*Id.*; see also Declaration of Beth Lewis ¶¶ 6-20, attached as Ex.
16 12 (explaining risks to teachers and students, and her inability to physical distance in her
17 classroom)] Moreover, there is compelling data that if the entire class is wearing a mask, there
18 will be far less need for quarantines, meaning mask mandates help keep children in school
19 learning. [Feldman Decl. ¶ 5] The only available way to keep our children and teachers safe is
20 to allow schools to require masking. Any other path will lead to countless unnecessary COVID
21 cases and deaths in our community. [*Id.* ¶ 7]

22 Several Arizona school districts have adopted mask mandates in line with this expert
23 guidance, including (among others) Phoenix Union High School District, Madison Elementary
24 School District, Alhambra Elementary School District, Roosevelt Elementary School District,
25 and Phoenix Elementary School District, and Tucson Unified School District.

1 HB2898’s design to prevent mask mandates defies the scientific evidence of pandemic
2 response and causes extreme potential for irreparable harm to Arizona and her people. Unless
3 HB2898 is declared unconstitutional and enjoined, school districts’ mask mandates will be
4 unlawful when HB2898 takes effect on September 29, and public schools could be left powerless
5 to protect their students and staff. Even more, they are at risk of adverse action being taken
6 against them, as urged by Republican lawmakers. *See* Compl. Ex. F (urging retribution against
7 Districts issuing policies requiring masks).¹⁰

8 According to Dr. Gerald, “[r]esumption of in-person instruction (K-12 and universities)
9 in the face of high community transmission, low vaccination rates, prohibition of universal
10 masking, lack of surveillance testing, and minimal physical distancing will undoubtedly lead to
11 frequent school-related outbreaks and accelerating community transmission.” *Joe Gerald, MD,*
12 *PhD, Weekly Arizona COVID-19 Data Report: Researcher Analyzes Arizona COVID-19*
13 *Spread Models for Decision-Makers, Univ. of Ariz., Aug. 6, 2021, [https://](https://publichealth.arizona.edu/news/2021/covid-19-forecast-model)*
14 *publichealth.arizona.edu/news/2021/covid-19-forecast-model.* [*See also* Elliott Decl.; Harrel
15 Decl.; Feldman Decl.; Franks Decl.]

16 Indeed, many schools are already reporting COVID outbreaks. [Compl. ¶¶ 118-122]

17 **V. Without an Injunction, The BRBs Will Cause Irreparable Harm.**

18 A violation of the Arizona Constitution constitutes irreparable harm, and an injunction is
19 Plaintiffs’ only available remedy to prevent enforcement of these unconstitutional laws. *See,*
20 *e.g., Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984)*
21

22 ¹⁰ Private schools, on the other hand, will be unaffected by HB2898 and may continue to
23 require masks to keep students and staff safe. Brophy College Preparatory and Phoenix
24 Country Day School, for example, have mask mandate for students and staff, and will be able
25 to maintain those policies even if HB2898 takes effect. Letter from the Brophy Principal’s
26 Office, Aug. 4, 2021,
<https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=435655&s=750&snd=8a1d17dc-bce7-442e-ac99-633ceceb5911> (last visited Aug. 12, 2021) [Compl. Ex. G].

1 (“An alleged constitutional infringement will often alone constitute irreparable harm.”) (citing
2 Wright & Miller, 11 Fed. Prac. and P. § 2948 at 440 (1973)).

3 What’s more, Plaintiffs face imminent irreparable harm if the challenged BRBs become
4 effective. If the Court does not enjoin HB2898, the teacher Plaintiffs will lose their ability to
5 work in a reasonably safe environment or to have a classroom that is safe for their students. [See
6 Lewis Decl. ¶ 6] They are also at risk of potential disciplinary sanctions – including loss or
7 suspension of their teaching licenses – or civil enforcement actions if they are found to be
8 teaching vaguely described “concepts” that the Legislature has apparently found too
9 controversial. [Id. ¶ 7]

10 If HB2898 goes into effect, schools that currently require masks will lose that ability to
11 protect students and staff from a deadly airborne virus. [Id. ¶¶ 8-21] If that happens, the minor
12 children of the parent Plaintiffs are at risk of contracting a highly contagious virus. [Id.] Dr.
13 Harrel has three children in public schools. One of her children has an IEP, and she wants that
14 child (and all her children) to benefit from in-person learning. She was faced with the difficult
15 choice of her children’s physical safety and their academic success. She recently made the
16 difficult decision to move her children to a school district that implemented a mask mandate
17 despite the threats outlined above. [Harrel Decl. ¶ 9] But if HB2898 is permitted to take effect,
18 she will lose that ability, and she and her children will be irreparably harmed. *Id.* All of the
19 plaintiff parents face the same risk of harm. [E.g., Lewis Decl. at ¶ 8-15; Franks Decl. ¶¶ 7-8]

20 Likewise, if the COVID mitigation prohibitions of SB1825 are permitted to go into effect,
21 the students, faculty, and staff at our higher education institutions will suffer irreparable harm.
22 For example, Plaintiff Newhauser is a professor at ASU, who must conduct in-person teaching.
23 [Declaration of Richard Newhauser ¶¶ 2-3, attached as Ex. 13] He is at increased risk for serious
24 illness from COVID because of his age and an underlying health condition. [Id. ¶ 4] In June,
25 ASU announced a policy that put in place significant mitigation measures to protect the students,
26 faculty, and staff at ASU. [Id. ¶ 5] The governor issued an executive order banning these

1 measures, which will be rescinded at the end of September. [*Id.*] But if SB1825 goes into effect,
2 ASU and other higher educational institutions will be permanently prohibited from implanting
3 those mitigation policies. If allowed to stand, the faculty, staff and students will be exposed to a
4 higher risk of contracting COVID. Even ASU’s recent implementation of a mask mandate will
5 not prevent the increased risks from implantation of SB1825. [*Id.* ¶¶ 8-9; *see also* Elliott Decl.
6 at 5-6 (discussing importance of vaccine in limiting spread of illness)]

7 The risk of irreparable harm caused by SB1825 affects large groups of people, including
8 students, faculty, and staff whose ages range from young adults to professors in their 70’s and
9 80’s. [Declaration of Laurie Stoff ¶¶ 2-6, attached as Ex. 14] Many of these individuals care for
10 and live with their spouses and children and others care for or live with elderly parents. Some
11 faculty and staff have health conditions that put them at increased risk of harm or death from
12 COVID, such as those undergoing chemotherapy, and some live with or care for family members
13 with similar conditions. [*Id.* ¶ 6] ASU and UA are returning to a great extent to in-person
14 learning. In many of their classrooms it is not possible to physically distance. [*Id.* ¶ 7] If the
15 challenged portion of SB1825 takes effect the faculty and staff, our students, our families, and
16 the larger communities where they work and live, will be exposed to a greater risk of contracting
17 COVID. [*Id.*]

18 Allowing SB1819 to become effective would also irreparably damage Plaintiffs’ ability
19 to participate in our political system. Many Plaintiffs are active participants in the legislative
20 process. [*E.g.*, Compl. ¶¶ 9-21; Lewis Decl. ¶ 3; Declaration of Joel Edman ¶ 10, attached as Ex.
21 15] Plaintiff AZAN’s core mission, for example, will be harmed by the Legislature’s conduct of
22 improperly including various unrelated policies in the budget reconciliation bills instead of
23 through proper legislative channels. [Edman Decl. ¶ 4] A cornerstone of our democracy is that
24 political decisions are driven by voters and that laws are passed in the open, after robust public
25 debate. [*Id.* ¶ 8] That legislators “sold” their votes behind closed doors in exchange for getting
26

1 pet policies added to budget reconciliation bills is antithetical to AZAN’s mission and many
2 Plaintiffs’ work in the Legislature. [*Id.* ¶¶ 11-13] *See Bennett*, 206 Ariz. at 528 ¶ 38.

3 **VI. The Balance of Hardships and Public Interest Favor an Injunction.**

4 Lastly, the balance of hardships and public interest weigh heavily in Plaintiffs’ favor.
5 Upholding the foundation of our representative democracy serves the public interest. An
6 injunction would safeguard that interest against unconstitutional conduct by the Legislature and
7 preserve the proper legislative process. And because the BRBs violate the Arizona Constitution,
8 “public policy and the public interest are served by enjoining [this] unlawful action.” *Arizona*
9 *Pub. Integrity All. v. Fontes*, 250 Ariz. 58 ¶ 27 (2020). Beyond that, Plaintiffs face grave
10 hardships caused by these laws. As detailed above, the many Plaintiffs and their families will be
11 at risk of contracting COVID-19 because the BRBs will prohibit safety measures that will keep
12 employees and children reasonably safe at work or school.

13 **Conclusion**

14 The Legislature has been pushing the envelope for years, and this time they have gone
15 too far. They buried substantive policies in the budget with no adequate notice to the public, and
16 filled a “budget procedures” bill with multiple, unrelated subjects. The constitution doesn’t allow
17 that. It also doesn’t allow the Legislature to arbitrarily discriminate against public school students
18 and their right to be physically safe at school.

19 The Court should declare HB2898, Sections 12, 21, and 50; SB1825, Section 2 (A.R.S. §
20 15-1650.05); SB1824, Sections 12 and 13; and SB1819 unconstitutional, and enjoin the State
21 and its agents from implementing or enforcing them. The Court should also award Plaintiffs their
22 attorneys’ fees and costs under the private attorney general doctrine and any other applicable
23 statute or equitable doctrine.

1 RESPECTFULLY SUBMITTED this 18th day of August, 2021.
2

3 **COPPERSMITH BROCKELMAN PLC**

4 By /s/ Roopali H. Desai

5 Roopali H. Desai

6 D. Andrew Gaona

7 Kristen Yost

8 **ARIZONA CENTER FOR LAW IN THE
9 PUBLIC INTEREST**

10 Daniel J. Adelman

11 *Attorneys for Plaintiffs*

12 ORIGINAL served via electronic means
13 this 18th day of August, 2021, upon:

14 Brunn W. Roysden III (beau.roysden@azag.gov)

15 Michael S. Catlett (michael.catlett@azag.gov)

16 2005 North Central Avenue

17 Phoenix, Arizona 85004

18 *Attorneys for Defendant State of Arizona*

19 /s/ Diana J. Hanson
20
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22
23
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EXHIBIT 1

1 **Declaration of Chris Kotterman**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am the Director of Governmental Relations of Arizona School Boards
5 Association (“ASBA”), and I am authorized to make this declaration on its behalf.

6 3. ASBA is a private, non-profit, non-partisan organization that provides training,
7 leadership and essential services to public school governing boards statewide. More than 240
8 governing boards, representing nearly 1 million Arizona students, are members of ASBA.

9 4. I am familiar with the mission and goals of ASBA, as well as our members’
10 priorities and concerns.

11 5. I have personal knowledge of the matters set forth in this Declaration. Except
12 where described otherwise, my personal knowledge is based on my personal participation in or
13 observation of the matters set forth herein.

14 6. ASBA’s vision is: “The best schools in every community.” Its mission is to
15 “cultivate excellence in locally-governed school districts.” In its advocacy, ASBA strives to be
16 the most influential voice for public education in Arizona.

17 7. As an organization, ASBA is deeply concerned about the erosion of public
18 education in Arizona. As a registered lobbyist for ASBA, I engage in the Legislative process on
19 behalf of ASBA member districts, which currently includes every school district in the state.
20 ASBA’s primary goal is to advocate for adequate funding to support high quality district public
21 schools, and protecting and preserving local control/district autonomy. Chief among the
22 concerns regarding local control are the preservation of district authority regarding curriculum
23 and instruction, oversight of district employees, and authority over the management of student
24 conduct to preserve a safe and secure school/educational environment.

25 8. The budget process during the last legislative session, including the passage of
26 budget reconciliation bills (“BRBs”) containing non-budget related substantive enactments

1 restricting school districts, schools, and teachers, has frustrated ABSA's mission and advocacy
2 goals, and forced it to divert resources in response.

3 9. The budget process, perhaps more than any other legislative process, is conducted
4 with minimal public input, and in modern times has been controlled entirely by the party holding
5 the majority in the state Legislature. This is because the majority party shapes a budget largely
6 out of public view, meeting with small groups of legislators that do not constitute a majority of
7 the caucus, shaping a proposal that can secure the necessary votes from the majority caucus.
8 Then and only then is the proposal drafted into bills and presented for a public hearing before
9 the appropriations committee. This step is merely a formality, however, because the deal has
10 already been struck. The members who have agreed to the deal vote yes, and those who do not
11 agree vote no (usually the minority), and the budget passes within a day if not hours. Any
12 attempts at persuading members to refuse to vote for the budget over some objections they may
13 have are usually futile, as they are told by their leadership that they are holding up the budget.

14 10. Contrast this to the typical bill process, where there is an opportunity to lobby
15 members on the policy involved, and the bill stands on its own merits without leadership having
16 the additional leverage to blame members for withholding support for the entire state budget.
17 Politics are still involved, but ultimately, voting against a bill is possible because it is not
18 packaged with other provisions (such as education funding) that the member may care about.

19 11. ASBA was deprived of meaningful participation in the budget process this past
20 legislative session because policies that ASBA opposes were added in HB 2898, a 200-plus page
21 floor amendment that was released with less than 60 minutes' notice before members were
22 expected to vote on it, while members of the House of Representatives were already on the floor
23 of the House. The public was not permitted access to the floor of the House, and thus
24 Representatives were inaccessible to those wishing to plead their case. Further, after HB 2898
25 was passed out of the House, the Senate majority suspended the rules of the Senate requiring a
26 hearing on all legislative matters (Senate rule 2J), depriving myself as the organizational

1 representative, ASBA members, and the public of the ability to give public comment on the bills
2 as amended which contained the objectionable provisions.

3 12. It is my opinion that that ASBA could have blocked objectionable policies, such
4 as the prohibition on certain curriculum and instruction, had they not been logrolled into a BRB.

5 13. Indeed, SB 1532 was the original bill that was amended in the House of
6 Representatives to include the prohibited curriculum and instruction provisions. After it passed
7 the House and went to the Senate, ASBA spoke to Sen. Paul Boyer about its opposition to the
8 bill. Sen. Boyer voted against SB 1532 on May 27, 2021, and the bill failed. Substantially the
9 same provisions from SB 1532 later reappeared in a BRB, HB 2898.

10 14. The BRB provisions challenged by ASBA in this lawsuit are not related to budget
11 reconciliation. They are not statutory and session law changes necessary to effectuate the budget.

12 15. The House conducted a final vote on HB 2898 later the same day, with no
13 meaningful opportunity to engage with sympathetic House members on the policy changes. This
14 time, Sen. Boyer's vote was secured on the budget by adding Empowerment Scholarship
15 Account provisions to HB 2898.

16 16. Several legislators made no secret about the fact that they would leverage their
17 votes on the budget, particularly to prohibit masks in schools. For example, Representative
18 Chaplik affirmatively stated that he would not agree to any budget that does not strip authority
19 from districts to issue mask mandates.

20 17. Ultimately, despite having zero budget impact whatsoever, substantive policy
21 provisions prohibiting public school district mask mandates and prohibiting certain curriculum
22 and instruction were added to a BRB, HB 2898, to garner the votes of all the Republicans to pass
23 the budget.

24 18. ASBA expends significant resources to influence public policy according to the
25 member-driven agenda, including preventing the passage of laws it deems objectionable and
26 challenging those that are worthy of legal challenge. Any time and effort spent on defending

1 districts from objectionable and unconstitutional laws is time and effort ASBA cannot spend
2 proactively advancing the interests of its members.

3 19. Prior to working for ASBA, I was a member of the staff at the Legislature serving
4 on the Democratic staff of the House and Senate for a combined total of seven years. For six of
5 those years, I was the K-12 committee analyst for the House and Senate Democrats and handled
6 the K-12 aspects of the budget. For four of those years, I also served as the lead appropriations
7 analyst for House Democrats as well, covering every aspect of the budgeting process except for
8 Health and Human Services.

9 20. The practice of using BRBs is relatively new. But even as the practice has become
10 more common, it is still required that all provisions must be “germane.”

11 21. Importantly, therefore, every provision in a BRB must relate to something in the
12 general appropriations (aka “feed”) bill. In other words, for an item to be included in a budget
13 bill, including in a BRB, it must have some connection to a specific appropriation. For example,
14 a substantive change to the computation of Average Daily Membership for schools or a
15 clarification of some funding formula may be included in a BRB because these provisions have
16 an impact on the flow of funding to school districts and charter schools.

17 22. Combining other substantive policy enactments into budget bills is misleading to
18 the public because the provisions are not “germane” and there is no adequate notice that policy
19 changes are contained in the budget bill.


20 23. This is especially true if the policy provisions were introduced but defeated in the
21 normal legislative process. For example, the prohibited curriculum and instruction provisions
22 were adopted as a floor amendment to a bill that was originally a transportation bill and was
23 amended to be an education-related bill via a strike-everything amendment in the Transportation
24 Committee. Until the bill was up for 3rd read to pass out of the House, the bill appeared in the
25 public information system as “county transportation planning assistant.”

1 24. ASBA holds as one of its core values that the basic life needs of children must be
2 met for them to succeed. This includes the protection of student health and safety while they are
3 at school. ASBA has advocated for increased physical and mental health supports for students
4 because students who are in good health miss school less and are able to learn better. School
5 districts also have a responsibility to protect students in their care from harm. The CDC, the
6 nation's pre-eminent authority on infectious disease, now recommends masks on all K-12
7 students and staff in school. Failing to implement that guidance risks infection in students and
8 staff, particularly those under 12 who cannot yet receive a vaccine. In order to credibly fulfill its
9 mission, school districts must have the ability to follow the guidance of public health officials.

10 25. The challenged BRB provisions pose a completely unnecessary threat to the health
11 and safety of students and staff. I do not believe we can keep our children safe unless the
12 challenged provisions are invalidated.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on August 18, 2021.

15 
16 _____
Chris Kötterman

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EXHIBIT 2

1 **Declaration of David Lujan**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am President and CEO of Children’s Action Alliance (“CAA”), and I am
5 authorized to make this declaration on its behalf.

6 3. CAA is a private, non-profit, non-partisan organization that provides an
7 independent voice for Arizona children at the state capitol and in the community.

8 4. I am familiar with the mission and goals of CAA.

9 5. I have personal knowledge of the matters set forth in this Declaration. Except
10 where described otherwise, my personal knowledge is based on my personal participation in or
11 observation of the matters set forth herein.

12 6. CAA’s vision is: “An Arizona where all children and families thrive.” CAA’s
13 mission is to be “an independent voice that identifies and eliminates barriers to the well-being
14 of children and families and creates opportunities through partnerships and policy solutions.”

15 7. The primary manner in which CAA carries out its mission of creating an Arizona
16 where all children and families thrive is through advocating for policies and legislation at the
17 State Capitol. Fifteen out of 19 of CAA’s employees are policy and communications experts
18 and their job responsibilities include researching and analyzing legislation and building
19 coalitions throughout Arizona to mobilize and engage those coalitions to support and/or oppose
20 legislation at the legislature. They also assist in writing legislation and amendments to
21 legislation. They regularly meet with lawmakers, testify in committees and prepare updates to
22 keep the public aware of the status of legislation CAA cares about at the State Capitol.

23 8. One of the main focus areas of CAA’s advocacy work is children’s health. The
24 policy to prohibit school districts and localities from mandating masks in their schools is one
25 that CAA is deeply interested in especially as the number of COVID cases are increasing in
26 Arizona. Had the policy enactments moved through the process as stand-alone bills, there would

1 be a period of several weeks from the time the bill was introduced, then scheduled for its initial
2 hearing, then Rules and caucus and then committee of the whole and 3rd read in its initiating
3 chamber. If it passed that chamber, it would then go through the same process in the other
4 chamber. Throughout that time period, CAA would have been able to produce data, research
5 and other written material to inform the public, media and lawmakers why they should oppose
6 the legislation. CAA would have been able to schedule time to meet with lawmakers and testify
7 in the committees in opposition to the legislation. CAA would have had time to make people
8 aware of the legislation and inform them on the various ways they could engage in the legislative
9 process to oppose the legislation (call their legislators, testify in committee, email their
10 legislators, etc.).

11 9. The provisions challenged in this lawsuit were inserted into budget reconciliation
12 bills (“BRBs”) and, therefore, CAA was denied meaningful notice and participation in the
13 regular legislative process. Budget bills are introduced in an expedited manner, with very little
14 time between when they are introduced and the time they are enacted.

15 10. Inserting substantive law changes, like the prohibition on mask mandates, into
16 BRBs with dozens of other unrelated policies completely changes the ability to effectively
17 advocate for a particular issue. Instead of lawmakers and the public considering the policy on its
18 own individual merits, the policy must now compete with all the other unrelated policies
19 contained in the legislation. Instead of lawmakers either supporting or opposing the policy on
20 the merits, they now must weigh whether their support or opposition for that policy is
21 outweighed by their support or opposition to any of the other policies contained in the budget
22 bill.

23 11. Because the Legislature inserted dozens of policy issues unrelated to the budget
24 into the budget bills, CAA’s mission has been frustrated and it has been forced to divert resources
25 in response. In just the past two months, I estimate that we have spent 50 hours of staff time
26 (totaling thousands of dollars) reacting and responding to the BRB enactments.

1 12. I have worked or served in the legislature for more than 20 years in various
2 capacities. As an Assistant Attorney General from 1998 to 2002, I represented the Arizona
3 School Facilities Board and was also the attorney in the AG's office taking the lead on school
4 finance matters. In this capacity, I was often asked to weigh-in on budget and assist in drafting
5 provisions in the budget related to school finance or the school facilities board.

6 13. From 2003 to 2004 I worked in the State Senate as a Research Analyst/Attorney
7 for the Senate Judiciary Committee. In this position I participated in drafting legislation and
8 needed to be familiar with the state budget. I also went through training through Arizona
9 Legislative Council on proper bill drafting procedures.

10 14. I served in the Arizona House of Representatives from 2005 to 2011 and in the
11 Senate from 2012-2013. I was the House Minority Leader in 2009 and 2010. I served on the
12 House Appropriations Committee from 2007 to 2008. As a state lawmaker, particularly serving
13 on the Appropriations committee and in leadership, I was very involved in the state budget
14 process and was aware of how budget bills are drafted.

15 15. I have been employed with CAA and its affiliate the Arizona Center for Economic
16 Progress since April 2016. During that time, I have closely followed and participated as an
17 advocate/registered lobbyist on six budgets.

18 16. Budget bills, commonly known as BRBs, include only the statutory changes
19 necessary to achieve the spending levels of the fiscal year budget that were appropriated in the
20 general appropriations (aka "feed") bill. Put differently, a statutory change or session law is only
21 properly inserted in a BRB if it is necessary to effectuate the budget.

22 17. Where, as is the case with the challenged BRB provisions, there is no direct tie to
23 the "feed" bill, the substantive law changes are not related to budget reconciliation. Furthermore,
24 because the challenged BRB provisions are not related to budget reconciliation, the title of the
25 BRBs are misleading and do not provide adequate notice of the policy changes.

26

1 18. During the last legislative session, the Legislature blatantly included non-budget
2 related enactments in various BRBs, such as the challenged provisions in HB 2898, SB 1824,
3 SB 1825 and SB 1819, to buy votes from legislators for the budget. Indeed, CAA openly saw
4 lawmakers stating they would withhold their votes if they did not get their pet issue passed as
5 part of the budget.

6 19. Combining non-budget related substantive policy enactments into BRBs is
7 misleading to the public and poses a direct harm to CAA’s work and mission. Further, the BRB
8 provisions challenged in this lawsuit are harmful to Arizona children and families for whom
9 CAA advocates.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on August 18, 2021.

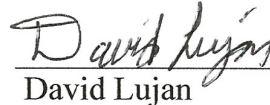
12 
13 _____
14 David Lujan

EXHIBIT 3



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2898

K-12 education; budget reconciliation; 2021-2022.

Purpose

Makes statutory and session law changes relating to K-12 education necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1826 contains the budget reconciliation provisions for changes relating to K-12 education.

Provisions

Basic State Aid

1. Increases the base level for FY 2022 from \$4,305.73 to \$4,390.65.
2. Adjusts, effective July 1, 2022, the basic state aid apportionment schedule to provide payments on the 15th business day, instead of the 1st business day of each month.

Charter Schools

3. Increases the Charter Additional Assistance (CAA) amount per student count for FY 2022:
 - a) from \$1,875.21 to \$1,897.90, for students in preschool programs for children with disabilities, kindergarten programs and grades 1 through 8; and
 - b) from \$2,185.53 to \$2,211.97, for students in grades 9 through 12.

Transportation Funding

4. Increases the transportation support level per route mile formula amount for FY 2022:
 - a) from \$2.74 to \$2.77 for 0.5 or less approved daily route mileage per eligible student transported;
 - b) from \$2.24 to \$2.27 for more than 0.5 to 1.0 approved daily route mileage per eligible student transported; and
 - c) from \$2.74 to \$2.77 for more than 1.0 of approved daily route mileage per eligible student transported.

EXHIBIT 4



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1825

higher education; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to higher education necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1825 contains the budget reconciliation provisions for changes relating to higher education.

Provisions

Agricultural Workforce Development Program (Effective January 1, 2022)

1. Requires the University of Arizona cooperative extension office (cooperative extension office) to establish the Agricultural Workforce Development Program (Development Program) to provide incentives to food-producing agricultural organizations to hire apprentices by partially reimbursing apprenticeship costs.
2. Allows, subject to legislative appropriation, the cooperative extension office to reimburse a participating food-producing agricultural organization up to the actual cost of employing an apprentice.
3. Requires the Director of the cooperative extension office (Director) to adopt rules for the Development Program that, at a minimum, establish:
 - a) qualifications for food-producing agricultural organizations to participate in the Development Program, including need, the ability to supervise apprentices and the ability to provide meaningful, food production-focused work experience;
 - b) preferences for food-producing agricultural organizations owned or operated by farmers and ranchers located in rural areas, tribal areas or historically underserved areas;
 - c) a requirement that participating food-producing agricultural organizations pay apprentices an hourly wage rate that is at least the Arizona minimum wage rate;

EXHIBIT 5



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED

FACT SHEET FOR S.B. 1824

health; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to health necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1824 contains the budget reconciliation provisions for changes relating to health.

Provisions

Arizona Long-Term Care System (ALTCS)

1. Outlines the following FY 2022 county contributions for ALTCS:

County	Contribution
Apache	\$662,900
Cochise	\$4,551,700
Coconino	\$1,990,00
Gila	\$2,327,100
Graham	\$1,32,000
Greenlee	\$0
La Paz	\$375,100
Maricopa	\$184,272,900
Mohave	\$9,154,300
Navajo	\$2,744,100
Pima	\$44,073,400
Pinal	\$12,109,900
Santa Cruz	\$2,242,800
Yavapai	\$9,074,300
Yuma	\$9,701,600

EXHIBIT 6



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

REVISED

AMENDED

FACT SHEET FOR S.B. 1819

budget procedures; budget reconciliation; 2021-2022

Purpose

Makes statutory and session law changes relating to budget procedures necessary to implement the FY 2022 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

S.B. 1819 contains the budget reconciliation provisions for changes relating to budget procedures.

Provisions

Defense of State Elections Laws

1. Asserts, through January 2, 2023, the AG speaks for Arizona and must be allowed to intervene on behalf of the state in any proceedings in which the validity of a state election law is challenged if the AG determines that intervention is appropriate.
2. Exempts court challenges to the validity of the Clean Elections Act from language asserting the AG speaks for Arizona and must be allowed to intervene in proceedings in which the validity of a state election law is challenged.
3. Asserts that among state officials, the AG has sole authority to direct the defense of state election law or laws being challenged.
4. Allows the AG to intervene at any state of a proceedings, including to appeal or petition any decision, regardless of whether any state agency, political subdivision or officer or employee thereof is or seeks to become a party.

EXHIBIT 7

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021012160

08/16/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
P. McKinley
Deputy

DOUGLAS HESTER

ALEXANDER M KOLODIN

v.

PHOENIX UNION HIGH SCHOOL DISTRICT,
ET AL. MARY R O'GRADY

JUDGE WARNER

MINUTE ENTRY

Plaintiff's August 2, 2021 Motion for Temporary Restraining Order, and Defendants' August 6, 2021 Motion to Dismiss, are under advisement following argument.

1. Temporary Restraining Order.

A.R.S. § 15-342.05 was enacted during the COVID-19 pandemic to prohibit school districts from requiring students and teachers to wear masks. Phoenix Union High School District cites no legal authority that this statute is beyond the Legislature's power. Indeed, Arizona law expressly limits school districts' authority to policies that "are not inconsistent with law." A.R.S. § 15-341(A)(1).

But A.R.S. § 15-542.05 has not yet become effective. Under Arizona law, new laws are effective 90 days after the legislative session ends, which is September 29 this year. Ariz. Const. Art. IV, Pt. 1, § 1. Although there is an exception for emergency measures, they require a two-thirds vote and this statute was not approved by a two-thirds majority.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021012160

08/16/2021

Plaintiff argues that the statute's retroactivity clause makes it effective immediately. A retroactivity clause is not an emergency clause, and cannot be used to avoid the two-thirds vote requirement needed to make a statute immediately effective.

Plaintiff further argues that A.R.S. § 15-342.05 is an appropriations measure, which does not require an emergency clause and a two-thirds vote to be immediately effective. *See Garvey v. Trew*, 64 Ariz. 342, 354, 170 P.2d 845, 853 (1946) (requirements for emergency measure do not apply to appropriation measures). The statute is not an appropriation measure, it is a regulation of school districts. The inclusion of A.R.S. § 15-342.05 in a bill that also includes appropriations does not make the statute itself an appropriation measure.

Plaintiff argues in Reply that the District's mask policy violates existing law even without A.R.S. § 15-342.05. It does not. Arizona law gives school boards the authority to protect students and ensure the orderly operation of schools, subject to statutory limitations imposed by the Legislature. A.R.S. § 15-341(A)(1); *see also Pendley v. Mingus Union High Sch. Dist. No. 4 of Yavapai Cty.*, 109 Ariz. 18, 22, 504 P.2d 919, 923 (1972) ("There must, of course, be some authority to operate a school on a day-today basis and this statute amply supports the authority of the school board to pass reasonable rules and regulations for the orderly operation of the school."); *Kelly v. Martin*, 16 Ariz. App. 7, 9, 490 P.2d 836, 838 (1971) ("the legislature has delegated to the governing board of a high school district the control of the affairs of the district, subject to certain statutory controls").

IT IS ORDERED denying Plaintiff's August 2, 2021 Motion for Temporary Restraining Order.

2. **Motion to Dismiss.**

Because A.R.S. § 15-342.05 is not yet effective, the District argues that this lawsuit is premature and, therefore, should be dismissed. Plaintiff responds that he does not have to wait until A.R.S. § 15-341.05 becomes effective to challenge a policy that violates it. He notes that the Rules of Procedure for Special Action permit relief when a public body is "threatening to proceed" unlawfully. Ariz. R.P. Spec. Act. 3(b). He also argues that it is inevitable the law will come into effect on September 29, 2021 and that the mask policy will be illegal at that time.

Plaintiff is not required to wait until the day the statute becomes effective to seek relief. But its effective date is weeks away, and many things could change in that time. This far from the effective date, it cannot be said that a justiciable issue is inevitable, or that the District is threatening to proceed in violation of A.R.S. § 15-341.05.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021012160

08/16/2021

The Court will not dismiss the case, however, without giving Plaintiff the opportunity to amend the complaint. *See Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, 990 P.2d 26, 33 (App. 1999) (“Before the trial court grants a Rule 12(b)(6) motion to dismiss, the non-moving party should be given an opportunity to amend the complaint if such an amendment cures its defects.”). This will make a new lawsuit unnecessary in the event Plaintiff needs to challenge the policy once A.R.S. § 15-341.05 becomes effective.

IT IS ORDERED denying Defendants’ August 6, 2021 Motion to Dismiss, and granting Plaintiff leave to file a second amended complaint within 45 days.

EXHIBIT 8

1 **Declaration of Sean Elliott, MD**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in pediatrics and in the subspecialty of
5 pediatric infectious disease. I have served at the University of Arizona as a Professor of
6 Pediatrics, and the Associate Chair for the Department of Pediatrics, and the Director of Infection
7 Prevention for Banner University Medicine – Tucson. I retired from the University of Arizona
8 College of Medicine and provide pediatric subspecialty clinical care. I have consulted with
9 numerous healthcare systems in Arizona regarding COVID-19. I have expertise and knowledge
10 about the current science and medicine that affects the efficacy of COVID-19 mitigation
11 measures, and about the Delta Variant of COVID-19.

12 3. As with the rest of the U.S., Arizona currently has entered yet another surge in
13 COVID-19 cases, 93% of which are caused by the Delta variant (B.1.617.2) originally described
14 in India. The Delta variant represents a significant change in the patterns so far identified for the
15 pandemic. It is significantly more contagious than the prior, primary variant in the U.S. (Alpha
16 variant, B.1.1.7) and is causing disease in much younger people than previously. Likely
17 associated with both factors, there has been a significant increase in symptomatic pediatric
18 COVID-19 and a related increased hospitalization rate of children with SARS-CoV-2 infection.
19 The principal reasons for this increased infectivity lie in the new mutations that have evolved in
20 the Delta variant, making it both more successful in attaching to its target cells in the human
21 nasopharynx and in causing invasive, symptomatic disease. These same factors also increase the
22 ability of the variant to shed in respiratory droplets between humans and thus make the Delta
23 variant the most successful variant to date in spreading between humans.

24 4. Additionally, and for the first time, the Delta variant now has demonstrated
25 increased infectivity from pediatric patients to all others, including susceptible adults. Thus, the
26 COVID-19 pandemic has entered a new, “game changer” phase in which children and

1 adolescents are, for the first time, as likely if not more likely to spread the virus to others. In this
2 regard, the Delta variant now behaves just like Influenza, Respiratory Syncytial Virus,
3 Rhinovirus, and many others in which children are known to be the super-spreaders from schools
4 to their families every year.

5 5. Fortunately, the currently-approved vaccines in the U.S. (Pfizer, Moderna and, to
6 a lesser extent, Johnson&Johnson) retain protective efficacy against all SARS-CoV-2 infection,
7 including that caused by the Delta variant. These vaccines are highly protective against severe
8 COVID-19 caused by the Delta variant and have demonstrated superior efficacy at preventing
9 hospitalizations and Intensive Care Unit admissions. Ideally, every human should be vaccinated
10 fully and immediately to realize this significant protective effect and prevent further infections.
11 Sadly, the current reality is far from ideal, and many adults choose not to be vaccinated. Still
12 others remain only partially protected by their full vaccine series due to their underlying
13 immunodeficiencies or receipt of immunosuppressive medications. Importantly, children under
14 age 12 years are currently unable to be vaccinated.

15 6. The disparities in vaccine coverage in the U.S. have several important
16 implications. First, any unvaccinated adult or child has a high risk of acquiring COVID-19,
17 becoming severely symptomatic and requiring hospitalization, followed by yet further risks of
18 death related to COVID-19. Children, once thought to suffer only mild or even asymptomatic
19 COVID-19, now are experiencing significantly symptomatic disease, and many pediatric health
20 care centers across the country are overwhelmed with severely ill, COVID-19 pediatric patients.
21 The same risks of death and prolonged health impact seen in adults now can be anticipated in
22 children. Second, the Delta variant now has been shown to cause equal numbers of viral load
23 (numbers of viruses present) in the nasopharynxes of all people exposed to COVID-19,
24 regardless of vaccine status. Sadly, this means that even fully vaccinated people who are exposed
25 to the Delta variant now pose the same risk of carrying it to susceptible, unvaccinated people as
26 those who are unvaccinated. This finding now applies especially to young adults, adolescents,

1 and children due to the high-infectivity patterns of the Delta variant described previously. Third,
2 any person who is actively infected with the Delta variant expresses far greater viral load in their
3 nasopharynx and thus poses even greater risk of infecting others around them. Because
4 vaccination remains highly successful in preventing active infection, this means that
5 unvaccinated people who acquire COVID-19 pose a huge risk in being contagious to others.
6 Again, this fact has disproportionate negative impact on children younger than age 12 years,
7 since they remain unable to receive a COVID-19 vaccine.

8 7. To summarize the preceding points: the Delta variant is a game-changer due to
9 significantly increased infectivity which poses extreme risk for severe, symptomatic COVID-19
10 in unvaccinated people including children and adolescents. The baseline risk of infectivity from
11 the Delta variant is much higher than any previous variant, and becomes even higher when an
12 unvaccinated person acquires infection with the variant. This risk exists regardless of how
13 symptomatic a COVID-19 patient is or isn't. Because children and adolescents now carry a
14 higher risk of infectivity due to the Delta variant's mutations, this group of young people are a
15 source of significant exposure to unvaccinated people, as well as vaccinated people who have
16 only partial protection as a result of immunodeficiencies or receipt of immunosuppressive
17 medications in the U.S. and elsewhere.

18 8. Fortunately, other interventions exist to mitigate the risk of transmission of the
19 SARS-CoV-2 virus between humans. Masks have proven highly protective in this endeavor with
20 *no proven harmful effects*. Far more effective than social distancing, temperature checks, spot-
21 check COVID-19 screening tests, and other important pandemic mitigation measures, effective
22 wearing of a mask is the most-effective and easiest intervention to implement in preventing
23 COVID-19 societal transmission. However, to realize the societal AND personal protective
24 effects of mask-wearing, nearly everyone must wear the mask properly. Only with universal
25 mask-wearing can all people, vaccinated and unvaccinated, be protected from acquiring SARS-
26 CoV-2 colonization of their nasopharynxes and posing contagious risk to their secondary

1 contacts (e.g. family members, co-workers, service-industry workers, etc.) An individual child
2 who wears a mask is very unlikely to infect or expose others to COVID-19. However, if that
3 same, masked child is surrounded by others who are not wearing masks, the risk to the masked
4 child for acquiring COVID-19 increases significantly. Critically, those people who are
5 unvaccinated and have risk factors for serious COVID-19 must be protected by everyone around
6 them wearing a mask. If some people are not masked, the potential for COVID-19 transmission
7 to the susceptible person via creation of a cloud of airborne Delta variant is significant. That risk
8 extends also to all secondary contacts as noted above.

9 9. While important national organizations agree that a return to in-person school is
10 critical for the mental, emotional, physical and educational health of schoolchildren in the U.S.,
11 it is also true that schools now represent a venue of extreme risk for transmission. This is due to
12 the increased infectivity of Delta variant in school-children and adolescents and the extreme risk
13 of those children and adolescents taking active COVID-19 contagiousness home to their
14 susceptible family members, followed by still further secondary spread to those family members'
15 co-workers, classmates, etc. To prevent this cascade of events from occurring, the most-ideal
16 intervention of course is to fully vaccinate everyone. However, school children under age 12
17 years cannot be vaccinated and thus remain at high risk both for personal infection and for
18 triggering the above-described cascade of societal infectious outbreak. As well, the vaccination
19 rate of adolescents ages 12 years – 19 years is barely 10% in many parts of the U.S. and in
20 Arizona. Thus, supporting vaccination of school-children, while important, is not an effective
21 intervention. Instead, universal masking via a mask-mandate in school is the only accessible,
22 effective, and evidence-proven intervention likely to prevent the expected explosion of Delta
23 variant COVID-19 related to school activities. Already, there is ample evidence of multiple
24 outbreaks of COVID-19 directly associated with in-person school activities in schools and
25 school districts which have not implemented a mask mandate. Historically, the same evidence
26 exists in the annual influenza epidemic experienced in the U.S. and related directly to school-

1 associated transmission. Importantly, those schools which have implemented mask mandates
2 have NOT suffered the same numbers of cases and outbreaks. From a population-data
3 perspective, this difference in outcome is quite significant.

4 10. Specific to Arizona, the state's experience with COVID-19 has been extreme.
5 Arizona has been the worst state in the country (and even the world) for more than several weeks
6 due to its high attack rate of COVID-19. Arizona is nowhere near the identified 70% vaccination
7 goal set previously for last July for the U.S., meaning that a significant number of Arizona
8 residents and workers are still unprotected from possible introduction of COVID-19 into their
9 communities by infected school children. Arizona has been the in top 5 worst states in the U.S.
10 since the start of the pandemic due to its attack rate of COVID-19 in children, based on
11 cases/100,000 data submitted bi-weekly to the American Academy of Pediatrics. Arizona is the
12 2nd worst state in the U.S. for total pediatric deaths due to COVID-19, following only Texas
13 which has a much larger pediatric population. In mortality rates per 100,000 children, Arizona
14 is the worst.

15 11. These facts suggest that the risk to and by Arizona school-children for an explosion
16 of COVID-19 cases due to school activities is extreme. Follow this risk with the equally extreme
17 risk of secondary spread to Arizona communities from infected and exposed, unvaccinated
18 Arizona school-children, and the personal and societal potential impact of the Delta variant on
19 all Arizonans is potentially catastrophic. Fortunately, a simple, cheap, safe, and effective
20 intervention with ample power to prevent this human disaster exists: mask mandates in schools
21 have huge potential to protect all Arizonans from school-associated COVID-19 outbreaks with
22 their attendant extreme morbidity and mortality. Any executive order or legislation designed to
23 prevent such mask mandates directly defies the scientific evidence of pandemic response and
24 also causes extreme potential for irreparable harm to Arizona and her people.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on August 18, 2021.

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5 Sean Elliott, MD

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EXHIBIT 9

1 of Sars-CoV-2 at 30 days post-infection was 68%. Additionally, [another study published](#) recently
2 in *the Lancet* looked at over 80,000 recovered individuals, some with long COVID symptoms
3 and some without any symptoms at all. This study showed that participants exhibited significant
4 cognitive deficits versus controls when controlling for age, gender, education level, income,
5 racial-ethnic group, pre-existing medical disorders, tiredness, depression and anxiety. These
6 studies included young people, and indeed, we see long-COVID in children as well. One young
7 child I care for still has yet to recover a normal sense of taste and smell eight months out from
8 acute infection, and as a result, has been struggling with a food aversion and normal weight gain
9 during a critical period of development. Everything for this child tastes like burnt orange peel,
10 and he has lost weight and is requiring regular visits, including with a gastroenterologist who is
11 now entertaining the need for tube feeding.

12 6. Now with the Delta Variant, more and more young individuals in our communities
13 are being infected. This is partly due to the documented [higher “R nought” of the mutated virus](#),
14 which is the number of people a sick person will infect if the entire population is vulnerable to
15 the virus. But it is also due to inconsistent mask wearing due to the new legal restrictions, since
16 we know that, while universal masking will not prevent all cases of transmission, [it significantly](#)
17 [reduces the rate of transmission](#) and the viral load that those who do become infected are exposed
18 to. In schools, since the majority of children are NOT vaccinated, this will lead to a higher rate
19 of infectivity than seen with the alpha variant, as well as a higher viral load, which is the
20 concentration of virus active in the body. The [higher viral load of the delta variant](#) means that a
21 shorter duration of exposure to an infected person is needed to be exposed and infected due to a
22 higher concentration of the airborne virus even just with speaking and breathing. The viral load
23 of the virus, as with many, also peaks during the pre-symptomatic stage of the disease, meaning
24 the person spreading the virus is unlikely to even know they are infected since they feel fine.

1 7. This is why universal masking is a proven public health disease mitigation tool,
2 and one of the only tools we have right now until children can be vaccinated. *The CDC, Arizona*
3 *Department of Health Services, and nearly every single public health and medical guiding body*
4 *recommends universal masking in schools and other indoor settings.* Simply masking only one
5 child, or even a few, is not effective enough, since others who are unmasked will continue to
6 spread and become infected with the disease. In fact public health modeling based on viral
7 transmissibility has demonstrated that at [levels of masking around 80% or greater significantly](#)
8 [reduce disease transmission](#), and could even eliminate transmission over time, even when
9 wearing non-medical grade masks. However, the same study found that when 50% or less of the
10 population is masking, there is minimal impact on disease transmission. Observational studies
11 made throughout the pandemic have validated the need for universal masking, with [countries,](#)
12 [states, and work places requiring masks](#) seeing far fewer clusters of disease than those without.

13 8. Arizona is already in the top three states in the nation for both pediatric related
14 [COVID-19 hospitalizations and deaths](#). This will only continue to increase now that schools are
15 back in session, and schools are unable to require proven public health prevention tools. Given
16 that we are still learning whether the delta variant causes more severe disease in unvaccinated
17 people, especially children, we are placing our children in the middle of a dangerous medical
18 experiment without masking in schools. But we do know they can get sick and die, and that the
19 long-COVID outcomes do not discriminate in children.

20 9. As a parent of three children, and a family medicine physician who has dedicated
21 my career to maternal and child health and reducing health disparities, I recently made the
22 difficult decision to unenroll my children from a school that did not require masks due to
23 concerns about their safety. I have witnessed firsthand the devastating toll of this virus, and have
24 spent the entire pandemic taking extreme precautions to prevent becoming infected and
25 transmitting this virus to my own family. One of my children has an IEP for a learning disability,
26 and last year, fell behind with a lack of support on remote learning. All children learn best when

1 in the classroom, but this is even more important for many children with IEPs. I was faced with
2 the choice of my children’s physical safety and academic success. I decided to enroll them in a
3 school district that currently requires masks. However, this places a burden on my family due to
4 out of district transportation, and also the emotional toll on my children being in an unfamiliar
5 learning environment without any of their friends and familiar support systems. My ability to
6 have my minor children attend their school in a reasonably safe environment is being impeded
7 and threatened by the unconstitutional laws that are the subject of this action.

8
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed on August 17, 2021.

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12 —
13 Mary Catherine “Cadey” Harrel, MD

EXHIBIT 10

1 **Declaration of Jeremy Feldman, MD**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in internal medicine, pulmonary
5 medicine, and critical care. I have extensive experience treating patients with COVID-19. I
6 served as an expert for Governor Ducey early in the pandemic in support of COVID mitigation
7 measures the Governor had ordered and have been advising major companies in the state and
8 nationally. My team and I have cared for over 6,000 patients hospitalized with COVID over
9 the past 18 months and we continue to care for patients both in the hospital and in the office.

10 3. Arizona is in a major health crisis. The hospitals are at or above operating capacity
11 in many respects due to the present surge, and our younger children are unable to be vaccinated.
12 Hospitals around the state are unable to accept critically ill patients in transfer in a timely fashion
13 due to the COVID surge. The emergence of Delta variant is the engine driving this crisis
14 combined with poor public health policy. Early literature suggested that COVID was less likely
15 to affect children and less likely to be transmitted by children. More recent data strongly
16 contradicts the notion that COVID is not a concern for children. To the contrary, across the
17 country and around the state children’s hospitals are caring for critically ill children with
18 COVID. Recent studies confirm that children are susceptible hosts and excellent at spreading
19 the infection.

20 4. Why is Delta variant different? First, Delta variant is much more infectious. The
21 virus spreads more easily. In comparison to Alpha variant, people infected with Delta have much
22 more virus in the nose and back of the throat. This leads to more virus spreading in the air.
23 Second, fully vaccinated people are susceptible to getting infected and are able to spread Delta
24 variant to others. This is a very different from Alpha variant. For Alpha, vaccinated people
25 were not felt to be able to spread the infection. Although the majority of fully vaccinated people
26 who get infected with Delta will have mild to moderate symptoms, we are now seeing between

1 2-5% of the patients in the hospital with COVID are fully vaccinated. We are seeing young fully
2 vaccinated adults dying from COVID. Third, many older people are now more than six months
3 from their second dose of vaccine. Data from Israel shows that in the presence of Delta, vaccine
4 protection wanes after six months.

5 5. Mandatory masking in schools is the most effective public health measure to slow
6 the spread of COVID and prevent children and adults from becoming ill. Every major public
7 health organization recommends that children wear masks at school. This protects children from
8 getting sick and infecting their classmates, families and teachers. Furthermore, the primary
9 objective of schools is to teach children in school. There is compelling data that if the entire
10 class is wearing a mask, we will not have to quarantine the entire class when a single child tests
11 positive. Not only do masks limit transmission, they keep our children learning in school.

12 6. As to the argument that wearing masks is a hardship—this is a rationalization that
13 places politics over public health. Last year our students wore masks at school without any
14 significant problems. From a medical and public health perspective, the only way to keep our
15 children and teachers safe is to allow schools to require masking. Any other path is reckless and
16 will unequivocally lead to countless unnecessary COVID cases and deaths in our community.

17
18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on August 18, 2021.

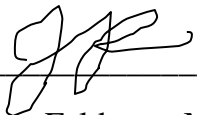
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23 Jeremy Feldman, MD

EXHIBIT 11

Declaration of Ruth Franks Snedecor, MD

1
2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a medical doctor. I am board certified in internal medicine. I provide care to
5 hospitalized patients and train physicians to do the same and am an Academic Hospitalist and a
6 Clinical Assistant Professor at University of Arizona College of Medicine-Phoenix. I have
7 extensive experience caring for patients with COVID-19. I have cared for patients with COVID
8 from the outset of the pandemic until today. I have advised a public school district about COVID
9 mitigation measures since June of 2020 to present.

10 3. I have seen firsthand the terrible toll that the Delta variant is causing in Arizona.
11 This variant is far more contagious, and infected individuals carry drastically higher viral loads
12 than those infected with the earlier dominant COVID-19 strain. The higher viral load that
13 infected people carry means that there is a higher risk of that person infecting other people. The
14 higher the viral load delivered upon infection, the worse the severity of illness.

15 4. Vaccinated individuals and formerly infected individuals can have a significant
16 viral load, even when completely asymptomatic, and can transmit the virus to others for many
17 days (and unvaccinated individuals are contagious for even longer) with the Delta variant which
18 is the dominant strain currently impacting Arizona. Exposing people to unmasked individuals,
19 even if vaccinated or previously infected, presents a serious risk especially since most of the
20 children in school are too young to be vaccinated and carry no immunity.

21 5. The science is clear that children can be infected with COVID, and that they can
22 and do become sick and some will die. It is clear that they can and do spread the virus to others,
23 including their family members and friends, and particularly those who are unvaccinated or are
24 immunocompromised. Children are far more impacted with severe illness than previous
25 COVID-19 strains or variants. Arizona is currently among the worst in the nation for COVID-
26 19 infections in children.

1 6. Mask mandates are the proven most effective currently available method of
2 protecting children in schools. Several studies last year have shown that masking strategies
3 significantly reduced spread of COVID-19 in the classroom and that children tolerate masking
4 extremely well. It is not sufficient to say that each person can decide for themselves whether to
5 wear a mask, because it is when masks are worn by nearly all individuals then infected
6 individuals will be far less likely to transmit the disease to others. An unmasked COVID-19
7 positive child/staff member still poses a significant health risk to masked children/staff around
8 them considering the previously mentioned reasons, more contagious and higher viral load. In
9 other words, my child’s mask protects other children, and their mask protects my child.

10 7. I am also a parent with children. Through the pandemic, I have done all I could to
11 keep my children safe. We have given up playing sports, seeing family members, attending
12 birthday parties or playdates with friends, and even dining out or going to places of amusement.
13 Despite these sacrifices and my best efforts over the past 18 months, they could potentially sit
14 next to an unmasked child or staff member in the classroom and contract COVID-19. One of
15 my children has severe asthma and is followed by a lung specialist and has been hospitalized.
16 She is on three asthma controlling medications daily. She is at greater risk of suffering serious
17 complications from COVID if she contracts it. Only one of my children is old enough to be
18 vaccinated (and has been). My girls are too young to be eligible. My children attend school in
19 the Madison School District, which currently has a mask mandate.

20 8. However, I am aware that the laws being challenged in this case seek to ban school
21 districts from using this life saving public health tool. My ability to have my children attend
22 school in a reasonably safe environment is being seriously threatened if this law is permitted to
23 go into effect.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2021.

DocuSigned by:
Ruth Franks Snedecor
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Ruth Franks Snedecor, MD

EXHIBIT 12

1 **Declaration of Beth Lewis**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a public school teacher in the Tempe Elementary School District and the
5 parent of minor children who attend public schools.

6 3. As an active participant in the legislative process, the budget reconciliation bills
7 (BRBs) as written this legislative session deprived me of my ability to engage and participate as
8 I normally would.

9 4. The inclusion of other legislative pieces unrelated to the budget led to horse trading
10 within the legislature that arguably removed citizens from the process of advocating for a better
11 budget. Backroom deals were made in order to sell the budget by adding ideas from bills that
12 legislators attempted to move through the legislative process, but did not have the votes to pass
13 for the entire legislative session.

14 5. As an Arizona educator and parent, these BRBs pose immense personal risk of
15 harm to myself, my unvaccinated children, and my unvaccinated students.

16 6. If the challenged provisions in HB 2898 go into effect on September 29, educators
17 in schools that currently require masks will lose that protection and be forced to be exposed to a
18 deadly airborne virus. If an injunction is not granted, as a classroom teacher I will lose my ability
19 to work in a reasonably safe environment or to have a classroom that is safe for my students.

20 7. As an educator, I am also at risk of potential disciplinary sanctions, including loss
21 or suspension of my teaching license, or civil enforcement actions if I am found to be teaching
22 vaguely described “concepts” that the legislature has apparently deemed “too controversial.”

23 8. As a parent, because of certain provisions in HB 2898, I am unable to both keep
24 my children safe and choose in-person learning.

25 9. At the time I filed the complaint in this case, the district where my children attend
26 school said everyone is “expected” to wear masks, but there is no enforcement of this

1 expectation. I can attest, based on information and belief, that the district was reluctant to
2 mandate masks because of the BRB. According to this article,
3 [https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10)
4 [lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10)
5 [9fc7-c41cfce04b10](https://www.12news.com/article/news/health/coronavirus/tempe-school-district-urges-arizona-lawmakers-to-allow-mask-mandates-to-slow-the-spread-of-covid/75-3fa95ab2-30ca-47f0-9fc7-c41cfce04b10), the district urged lawmakers to reconsider the law, and expressed that they
6 would like to have control over the decision to require masks.

7 10. After another court held that HB 2898 is not currently in effect, my district adopted
8 a mask mandate. But that mandate will no longer be legal if the challenged provisions in HB
9 2898 go into effect on September 29.

10 11. I can attest, upon information and belief, that districts in the area are worried that
11 their insurance trust will hold them liable if they mandate masks, and some district board
12 members worry they will be sued personally.

13 12. Significantly, districts are being threatened with defunding if they mandate masks.
14 Representative Hoffman penned a letter asking the Governor to “withhold the federal funding
15 currently under the Governor’s management from any school district that is non-compliant with
16 state law” and to “authorize temporary Empowerment Scholarship Accounts (ESAs) for all
17 students trapped within any school district that is non-compliant with state law.”
18 <https://www.azleg.gov/press/house/55LEG/1R/210811HOFFMAN.pdf>. To date, 25 other
19 lawmakers have signed on to this letter.

20 13. Days after Representative Hoffman issued his press release, Governor Doug
21 Ducey announced a program that offers grant funding to schools that comply with the ban on
22 mask mandates, [https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-nearly-65-million-expand-learning-programs)
23 [nearly-65-million-expand-learning-programs](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-nearly-65-million-expand-learning-programs), and to families who face “barriers” from “closures
24 and school mandates . . . that are not in compliance with the provisions set forth in state law.”
25 [https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-12-students-families)
26 [12-students-families](https://azgovernor.gov/governor/news/2021/08/governor-ducey-announces-relief-program-k-12-students-families).

1 14. This action by the Governor, relying on the unconstitutional laws challenged in
2 this case, ignores the worsening public health crisis and the importance of safe in-person
3 learning, and it puts children and teachers at risk.

4 15. As a parent and an educator, I am extremely concerned about the levels of
5 community transmission and the fact that certain provisions in HB 2898 seek to prohibit school
6 districts from implementing the most effective mitigation strategy.

7 16. Current case counts in Tempe Elementary School District are 67 (as of August 12,
8 8 days after school started) and growing. [https://www.tempeschools.org/parents/return-to-](https://www.tempeschools.org/parents/return-to-school-2021-22-school-year/covid-19-dashboard)
9 [school-2021-22-school-year/covid-19-dashboard](https://www.tempeschools.org/parents/return-to-school-2021-22-school-year/covid-19-dashboard). As these numbers climb, once the challenged
10 provisions in HB 2898 go into effect, the district will have no ability to impose proven, science-
11 based mitigation measures to protect my children.

12 17. Both of my children are under the age of 12 and are therefore not eligible to be
13 vaccinated. I have serious concerns about what will happen to them if they contract a deadly
14 virus, particularly as child hospitalizations increase under the Delta variant.

15 18. The Maricopa County Health dashboard for schools gives a broader context of
16 community spread and shows Tempe Elementary School District in “High” transmission rates
17 (over 100 cases per 100,000).

18 19. As of August 7 (only 3 days after the start of school), case rates rose from 206 per
19 100,000 the week prior to 260 per 100,000. According to the CDC and Maricopa County Health
20 dashboard, elementary schools in communities with high transmission should be in “hybrid
21 learning mode or reduced attendance with physical distancing of 6 feet or more, to the greatest
22 extent possible,” but our schools are not in hybrid mode.

23 20. As an educator, I cannot distance kids more than 2-3 feet because I have 25
24 students in my relatively small classroom.

1 21. As a parent who is spending my days in the classroom, I do not believe
2 we can keep our children safe unless the challenged provisions in HB 2898 are
3 invalidated. I have serious concerns about the impact on the health and safety of my own
4 children and my students.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on August 18, 2021.

7
8 
9 _____
Beth Lewis

EXHIBIT 13

1 **Declaration of Richard Newhauser, Ph. D.**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a Professor of English and Medieval Studies at Arizona State University,
5 where I have been on faculty since 2007.

6 3. I have an office on the campus of ASU. I also am teaching an in-person class at
7 ASU during the 2021 fall semester.

8 4. I am at increased risk for suffering serious illness from COVID-19 for at least two
9 reasons. First, I am over 70 years old. Second, I have been diagnosed with a medical condition
10 that has been identified as posing an increased risk of mortality if I contract the disease.

11 5. On June 14, 2021, ASU announced a policy that put in place significant mitigation
12 measures to protect people like myself, as well as other members of the faculty, students, and
13 the enormous non-faculty staff at ASU. (Update on Student Vaccine Expectations (available at
14 <https://eoss.asu.edu/health/announcements/coronavirus#covid-archive>)). The Governor
15 immediately issued an executive order banning ASU and other higher education institutions from
16 implementing this policy. In response, ASU rescinded the policy. The executive order will be
17 rescinded at the end of September.

18 6. I am aware that the legislature passed a law that will ban the sort of mitigation
19 measures that ASU originally announced as being necessary for the safety of individuals like
20 myself, as well as all students, staff, and faculty at ASU. Unless stopped by the court, this law
21 will go into effect at the end of September.

22 7. If this legislation is permitted to stand, I will be exposed to a higher risk of
23 contracting COVID-19 (even though I am vaccinated), and from suffering a worse course of the
24 disease due to my increased risk factors discussed above.

25 8. I am aware that ASU has instituted a mask requirement for in-person classes and
26 in limited other settings. Even with this requirement, I am still at increased risk due to the

1 inability of the University to implement the other mitigation measures that were announced in
2 its June 14th policy. Further, the mask “mandate” does not apply to all indoor areas at ASU. If
3 I go to the library (which I do as part of my job), or to the student union, I will be surrounded by
4 people that are not subject to the mask requirements.

5 9. I am not only worried about my own health and safety. I have close friends, good
6 colleagues, and graduate students with whom I work closely. None of them should be faced
7 with the prospect of working in a riskier environment due to the unconstitutional law that was
8 included as part of a budget reconciliation bill. Nor should my colleagues, co-workers, and
9 friends be faced with the prospect of bringing infection home to their spouses, children, or aged
10 parents.

11
12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on August 17, 2021.

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16 Richard Newhauser, Ph. D.
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EXHIBIT 14

Declaration of Laurie Stoff, Ph.D.

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2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am a Principal Lecturer and Honors Faculty Fellow at Arizona State University,
5 where I have been on faculty since 2014.

6 3. I have an office on the campus of ASU. I also am teaching in-person classes at
7 ASU during the 2021 fall semester.

8 4. I am a member and have a leadership role in the United Campus Workers of
9 Arizona (UCWAZ) labor union. I have been authorized by the Union to submit this declaration
10 in support of this case.

11 5. The membership of UCWAZ includes faculty, staff, graduate student workers, and
12 undergraduate student workers. We have a diverse membership that includes positions that
13 range from senior professors to custodial workers. A primary mission of UCWAZ is to advocate
14 for a safe work environment for all those who work at Arizona's university campuses.

15 6. UCWAZ's membership includes a broad range of ages, from young adults, and
16 parents with young children, to older professors in their 70's and 80's. Many of our members
17 care for and live with their spouses and children, and still others live with or care for their elderly
18 parents. I am aware of members who have health conditions that put them at increased risks of
19 harm or death from COVID (such as those undergoing chemotherapy), and members who live
20 with or care for family members at increased risk from similar conditions. I personally am aware
21 of many workers on ASU's campus who have been diagnosed with COVID-19.

22 7. ASU and the University of Arizona are returning to a great extent to in-person
23 learning. The ability to provide accommodation for remote teaching is quite limited and I and
24 most of my colleagues would not qualify for accommodation. Faculty and graduate student
25 workers have been told that they must teach in person with no ability to switch to remote
26 instruction regardless of the degree of spread of the virus on campus or in our classrooms. I

1 know from my own experience that it is not possible to physically distance in many of our
2 classrooms. I will be teaching this fall semester in classrooms where physical distancing will be
3 impossible. As a lecturer in Barrett, the Honors College at ASU, I (along with all of my
4 colleagues) teach in smaller classrooms that will be filled to capacity. Many of my colleagues
5 throughout the University face similar circumstances. Further, the inability to physical distance
6 applies not only in classrooms, but also in many of the offices for faculty and staff at ASU.

7 8. On June 14th, ASU announced a policy that put in place significant mitigation
8 measures to protect people like myself, as well as other members of the faculty, students, and
9 the enormous non-faculty staff at ASU. (June 14, Update on Student Vaccine Expectations
10 (available at <https://eoss.asu.edu/health/announcements/coronavirus#covid-archive>)). The
11 Governor immediately issued an executive order banning ASU and other higher education
12 institutions from implementing this policy. In response, ASU rescinded the policy. The
13 executive order will be rescinded at the end of September.

14 9. I am aware that the legislature passed a law that will ban the sort of mitigation
15 measures that ASU originally announced as being necessary for the safety of students, staff, and
16 faculty at ASU. Unless stopped by the court, this law will go into effect at the end of September.

17 10. If this legislation is permitted to stand, I, along with the membership of UCWAZ,
18 the other faculty and staff at our Universities, our students, as well as our families, and the larger
19 communities where we work and live, will be exposed to a higher risk of contracting COVID-
20 19. Many will be at risk of serious illness or death.

21 11. I am aware that ASU has instituted a mask requirement for in-person classes and
22 in limited other indoor settings. Even with this requirement, we are still at increased risk due to
23 the inability of the University to implement the other mitigation measures that were announced
24 in its June 14th policy.

25 12. On behalf of myself and UCWAZ, I ask the court to consider the irreparable harm
26 that will result from the implementation of Section 2 of SB 1825. The faculty and staff of our

Signature:


Laurie Stoff (Aug 18, 2021 15:25 PDT)

Email: ffots1@gmail.com

1 universities should not be placed in a riskier environment due to the unconstitutional law that
2 was included as part of a budget reconciliation bill.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on August 18, 2021.

5

6

Laurie Stoff

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Laurie Stoff, Ph.D.

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EXHIBIT 15

1 **Declaration of Joel Edman**

2 1. I am over 18 years old, competent to testify, and have personal knowledge of the
3 matters in this declaration.

4 2. I am the Executive Director of the Arizona Advocacy Network (“AZAN”), and I
5 am authorized to make this declaration on its behalf.

6 3. AZAN is a non-profit organization dedicated to defending and deepening
7 Arizona’s commitment to democracy.

8 4. AZAN’s mission, including allowing citizen participation in the legislative
9 process, is frustrated by the legislature’s conduct of improperly including various provisions in
10 the budget reconciliation bills in violation of the constitution as explained in this lawsuit.

11 5. We are committed to preserving a truly representative political system in which all
12 Arizonans make their voices heard. Ensuring Arizonans’ right to vote and sanctity and privacy
13 of its voter information is a core mission of AZAN.

14 6. We have diverted significant time and resources analyzing the impact of various
15 election-related provisions in the budget reconciliation bills this legislative session. This
16 legislative session, two full time AZAN staff were devoted to jointly working with coalition
17 partners to block legislative attacks on voting rights and democracy through advocacy,
18 education, and organizing.

19 7. Our ability to advocate for and defend a truly representative political system was
20 impeded this session by the policies passed through budget reconciliation bills as part of larger
21 effort by Republican lawmakers to undermine Arizona’s democracy.

22 8. One of the cornerstones of our democracy is that political decisions are driven by
23 voters, and AZAN is committed to preserving citizen participation in the legislative process.

24 9. Another cornerstone of our democracy is that the legislative process is open to the
25 public and laws should be made in the open, after fulsome public debate, rather than in secret.
26

1 10. AZAN is an active participant in the legislative process, but the budget
2 reconciliation bills passed this legislative session deprived us of our ability to engage and
3 participate as we normally would.

4 11. Further, the fact that legislators “sold” their votes in exchange for getting pet
5 policies added to budget reconciliation bills is antithetical to AZAN’s mission and its work in
6 the Legislature.

7 12. If SB 1819 goes into effect, AZAN’s mission will be harmed by the Legislature’s
8 conduct of improperly including various unrelated pet policies in the budget reconciliation bills
9 instead of through proper legislative channels.

10 13. SB 1819 is an egregious example of “logrolling” multiple completely unrelated
11 subjects into one bill. From dog racing, to voter registration, newspapers, and COVID-19
12 mitigation (to name a few), SB 1819’s subjects have nothing to do with each other.

13 14. AZAN is also dedicated to ensuring Arizonans’ right to vote and protecting the
14 sanctity and privacy of their voter information. This core mission will also be thwarted if SB
15 1819 goes into effect.

16 15. Enjoining SB 1819 is critical to preserving and protecting Arizona’s democracy, a
17 core mission of AZAN.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on August 18, 2021.

20 /s/ Joel Edman

21 Joel Edman
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26

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14 SUPERIOR COURT OF ARIZONA

15 MARICOPA COUNTY

16 ARIZONA SCHOOL BOARDS
ASSOCIATION, INC., an Arizona
17 nonprofit corporation, et al.,

18 Plaintiffs,

19 v.

20 STATE OF ARIZONA, a body politic,

21 Defendant.

No. CV2021-012741

**RESPONSE TO APPLICATION FOR
A PRELIMINARY INJUNCTION**

(Assigned to the Hon. Katherine Cooper)

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1 **I. INTRODUCTION**

2 Plaintiffs, the Arizona School Boards Association, et al. (collectively, “ASBA”),
3 challenge the constitutionality of SB 1819, and portions of SB 1824, SB 1825, and HB
4 2898. ASBA alleges that the acts or portions thereof violate the single subject provision
5 and the title requirement in the Arizona Constitution: Article IV, Part II, Section 13
6 (“Section 13”), the single subject requirement of Article IV, Part II, Section 20 (“Section
7 20”), and the equal protection clause of Article II, Section 13 (the “Equal Protection
8 Clause”). All of the challenged acts were passed by the Legislature and signed by the
9 Governor. ASBA bears the burden of proving each of its claims. For the reasons explained
10 below, the Court should rule for the State and deny relief.

11 **II. JUSTICIABILITY**

12 **A. Plaintiffs Lack Standing to Challenge SB 1819.**

13 While Arizona’s constitution does not contain a “case or controversy” provision
14 analogous to that of the federal constitution, Arizona courts consistently require as a matter
15 of judicial restraint that a party possess standing to maintain an action. *See Armory Park*
16 *Neighborhood Ass’n v. Episcopal Cmty. Servs. In Ariz.*, 148 Ariz. 1, 6 (1985); *State v.*
17 *Herrera*, 121 Ariz. 12, 15 (1978); *Alliance Marana v. Groseclose*, 191 Ariz. 287, 289 (App.
18 1997). To establish standing, a party must allege a “distinct and palpable injury.” *Fernandez*
19 *v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005). An “allegation of generalized
20 harm that is shared by all or a large class of citizens generally is not sufficient to confer
21 standing.” *Sears v. Hull*, 192 Ariz. 65, 69 (1998) (citing *Warth v. Seldin*, 422 U.S. 490, 501
22 (1975)). To have standing to challenge the constitutionality of legislation, plaintiffs “must
23 show that *they* have been injured by the alleged . . . violation.” *Id.* at 71 (emphasis added);
24 *see also Town of Wickenburg v. State*, 115 Ariz. 465, 469 (App. 1977) (“As a general rule,
25 one party cannot challenge the constitutionality of a statute by asserting that it offends the
26 constitutional rights of another.”).

27 The Arizona Supreme Court has required plaintiffs to satisfy standing requirements
28 even when the dispute involves budget reconciliation bills. *Bennett v. Napolitano*, 206 Ariz.

1 520 (2003). The court stated in that case: “This court has, as a matter of sound judicial
2 policy, required persons seeking redress in the courts first to establish standing, especially
3 in actions in which constitutional relief is sought against the government.” *Id.* at 524, ¶¶ 16,
4 19. “[O]ur standing inquiry has been especially rigorous when reaching the merits of the
5 dispute would force us to decide whether an action taken by one of the other two branches
6 of the . . . Government was unconstitutional.” *Raines v. Byrd*, 521 U.S. 811, 819–20 (1997).

7 Plaintiffs challenge six provisions of SB 1819, but they have not shown direct harm
8 to themselves from any of those provisions. The challenged sections address the allocation
9 of state resources for several election issues and a provision designed to restrict cities,
10 towns, and counties from expending funds to adopt or enforce ordinances related to
11 COVID-19. None of them are directed at any of the Plaintiffs and they have not alleged
12 more than a “generalized harm that is shared by all,” which is insufficient. *Sears*, 192 Ariz.
13 at 69. Plaintiffs have not alleged or proven that they will suffer individual, and not
14 generalized, harm if different paper is used for election ballots, the Attorney General
15 defends state election law, the Secretary of State requests state-specific instructions on
16 federal voter registration forms, the Senate establishes a committee to review audit results,
17 or local governments cannot pass certain ordinances. Plaintiffs have failed to demonstrate
18 a causal nexus between SB 1819 or any individual provision thereof and any specific injury
19 to themselves, and therefore lack standing to challenge SB 1819 as a whole or any of its
20 individual provisions.¹

21 **B. Whether the Contents of a BRB Are Necessary to Implement or Carry**
22 **Out Appropriations Is a Political Question.**

23 The Court should refuse, on justiciability grounds, to engage in the exercise of
24 questioning whether a budget bill, or individual provisions therein, is sufficiently related to
25 the budget or sufficiently tied to general appropriations. ASBA would have the Court, for
26 the first time in the history of the State, superintend the State budget process by determining
27 after the fact whether provisions contained in BRBs were really necessary for, or related to,

28 _____
¹ The standing analysis should be conducted on a provision-by-provision basis.

1 budgeting. *See* Mot. 1 (arguing that “the contents of each bill include substantive policy
2 provisions that plainly are not related to ‘budget reconciliation’ and are not tied to general
3 appropriations as set forth in the ‘feed’ bill”). Not only is there no textual basis for ASBA’s
4 proposed restrictions on the budget process, there are strong prudential reasons why the
5 judicial power does not extend to determining whether budgetary measures are sufficiently
6 related or tied to budgeting, thereby rendering it an unreviewable political question.

7 “‘Political questions,’ broadly defined, involve decisions that the constitution
8 commits to one of the political branches of government and raise issues not susceptible to
9 judicial resolution according to discoverable and manageable standards.” *Forty-Seventh*
10 *Legislature of State v. Napolitano*, 213 Ariz. 482, 485, ¶ 7 (2006) (citation omitted); *Brewer*
11 *v. Burns*, 222 Ariz. 234, 239, ¶ 21 (2009) (internal citation omitted) (questions involving
12 “whether the Legislature should include particular items in a budget or enact
13 particular legislation . . . clearly are political questions”). It is well established that “courts
14 will not consider political matters.” *Adams v. Bolin*, 74 Ariz. 269, 285 (1952).

15 Here, each of the challenged provisions address the operations of the state and
16 various political subdivisions governed by state law, and often substantially funded by
17 appropriated funds. In making appropriations, the Legislature frequently ties funding to
18 substantive rules. ASBA admits that budget reconciliation bills are common and necessary,
19 given the prohibition on including substantive laws in an appropriation bill. Mot. 4. There
20 is no requirement that ties between funding and substantive rules be directly referenced in
21 the law, and certainly no requirement that each BRB provision be linked to a line item in
22 the budget. The Legislature (and the Governor through the veto power) is given unfettered
23 discretion in this area. Setting the budget and deciding what is necessary to implement it
24 are uniquely legislative functions, and as such there are no judicially manageable standards
25 through which the Court could superintend the budgeting process.² *See Burns*, 222 Ariz. at
26 239, ¶21.

27
28 ² If the courts rule that “budget reconciliation” must be tied to specific portions of
the budget, that will be a new requirement that should be applied only prospectively.

1 Whether an act of the Legislature complies with the title and single subject
2 requirement is a different inquiry (addressed in detail below), which requires only a
3 determination of the subject of the title of an act and whether each of the provisions
4 contained therein is germane to that subject. *See State v. Harold*, 74 Ariz. 210, 214 (1952)
5 (“[A] provision in the act which directly or indirectly relates to the subject of the title and
6 having a natural connection therewith is properly included in the body of the act . . . or if it
7 is germane to the subject expressed in the title, it is constitutional.”). In other words, what
8 subject is embraced in the title of a BRB and are the provisions contained therein germane
9 to that subject? Although that question is not a political question, the different questions of
10 whether a BRB and each of its constituent parts are sufficiently related to budgeting or tied
11 to an appropriations bill have never been subject to judicial challenge because those issues
12 are the exclusive prerogative of the Legislature. The Court, as in *Burns*, should reject
13 ASBA’s invitation to further involve the Court in the legislative budgeting process.

14 **III. CONSTITUTIONALITY**

15 As discussed above, ASBA’s claim that the BRBs are not sufficiently related to the
16 budget is not justiciable and ASBA lacks standing to challenge SB 1819. But if the Court
17 disagrees and reaches the merits of ASBA’s claims, it should find that each of the
18 challenged bills are constitutional. When reviewing the constitutionality of a law, courts
19 “begin with a strong presumption that laws are constitutional. Indeed [courts] have a duty
20 to construe statutes in harmony with the constitution if it is possible to reasonably do so.
21 Thus, a party challenging constitutionality bears a heavy burden of establishing that the
22 legislation is unconstitutional.” *Martin v. Reinstein*, 195 Ariz. 293, 301–02, ¶ 16 (App.
23 1999) (citations omitted); *Hoffman v. Reagan*, 245 Ariz. 313, 316, ¶ 13 (2018) (accord);
24 *Biggs v. Betlach*, 243 Ariz. 256, 258, ¶ 9 (2017) (“When the statute in question involves no
25 fundamental constitutional rights or distinctions based on suspect classifications, we
26 presume the statute is constitutional and will uphold it unless it clearly is not.”).

27 **A. The Challenged Bills Satisfy the Title Requirement.**

28 With regard to Section 13 challenges, courts should liberally construe the word

1 “subject” “so as to allow the legislature full scope to include in one act all matters having a
2 logical or natural connection.” *Litchfield Elementary Sch. Dist. No. 79 v. Babbitt*, 125 Ariz.
3 215, 224 (App. 1980) (quoting *Johnson v. Harrison*, 47 Minn. 575, 577 (1891)); *Hoffman*,
4 245 Ariz. at 316, ¶ 14 (accord); *State v. Wagstaff*, 161 Ariz. 66, 69 (App. 1988), *approved*
5 *as modified*, 164 Ariz. 485 (1990) (accord). “The one-subject rule does not prohibit a
6 plurality of topics, only a disunity of subjects. The mere fact that a bill embraces more than
7 one topic is not fatal as long as a common purpose or relationship exists between the topics.”
8 *State ex rel. Ohio Civ. Serv. Emps. Assn. (“OCSEA”) v. State*, 2016-Ohio-478, ¶¶ 16–17,
9 146 Ohio St. 3d 315, 319 (citations omitted); *Hoffman*, 245 Ariz. at 316, ¶ 14. Courts will
10 “invalidate statutes as violating the one-subject rule only when they contain a manifestly
11 gross and fraudulent violation.” *OCSEA*, 2016-Ohio-478 at ¶ 17, 146 Ohio St. 3d at 319
12 (citation and internal quotations omitted).

13 “Subject” is not defined in the Constitution, but the Court of Appeals described it in
14 *Litchfield*:

15 ‘(S)ubject’ . . . is to be given a broad and extended meaning, so
16 as to allow the legislature full scope to include in one act all
17 matters having a logical or natural connection. To constitute
18 duplicity of subject, an act must embrace two or more
19 dissimilar and discordant subjects that by no fair intendment
20 can be considered as having any legitimate connection with or
21 relation to each other. All that is necessary is that the act should
embrace some one general subject: and by this is meant,
merely, that all matters treated of should fall under some one
general idea, be so connected with or related to each other,
either logically or in popular understanding, as to be parts of,
or germane to, one general subject.

22 *Litchfield*, 125 Ariz. at 224 (quoting *Johnson*, 47 Minn. at 577).

23 “[T]he title to the act may be broad in scope, thereby giving notice of a broad range
24 of legislation.” *Sample v. Sample*, 135 Ariz. 599, 603 (App. 1983) (finding that the House
25 Bill being challenged “reasonably sets forth in its title the legislation to be found in it so
26 that there is no surprise.”). Arizona courts,

27 have uniformly held that [the nature and purpose of title
28 requirement] was to prevent the inclusion of subjects in an act
which might not reasonably be expected to be found therein

1 under the title; that it would be given a liberal construction and
2 not a narrow and constrained one for the purpose of nullifying
3 legislation, and that it did not need to be a synopsis or complete
4 index of the subjects found in the act, but that any provision
directly or indirectly relating to the subject expressed in the
title, having a natural connection with and not being foreign
thereto, was proper.

5 *State ex rel. Conway v. Versluis*, 58 Ariz. 368, 377 (1941) (citations omitted). No Arizona
6 court has ever held that the individual provisions within a bill need to relate to each other;
7 rather, each provision of a bill need only be germane to the subject contained in the title of
8 the bill, even where the title is broad. It is well established that “the title to an act need not
9 be a complete index to its contents.” *Harold*, 74 Ariz. at 214 (citing *Taylor v. Frohmiller*,
10 52 Ariz. 211). Each provision of an act need only relate directly or indirectly to the subject
11 of the title and have a “natural connection therewith.” *Id.* When a subject of a bill is not
12 included in the title, the Constitution makes clear that the remedy is to only void the portions
13 not listed. *See* Section 13 (“[S]uch act shall be void only as to so much thereof as shall not
14 be embraced in the title”). Ariz. Const., art. IV, pt. 2, § 13.

15 Here, there is no dispute that the title of each of the challenged bills includes the
16 names of each statute amended in the bill. Moreover, those titles include the following:

- 17 HB 2898 **APPROPRIATING MONIES; RELATING TO**
18 **KINDERGARTEN THROUGH GRADE TWELVE**
19 **BUDGET RECONCILIATION**
- 20 SB 1825 **APPROPRIATING MONIES; RELATING TO BUDGET**
21 **RECONCILIATION FOR HIGHER EDUCATION**
- 22 SB 1824 **APPROPRIATING MONIES; RELATING TO HEALTH**
23 **BUDGET RECONCILIATION**
- 24 SB 1819 **APPROPRIATING MONIES; RELATING TO STATE**
25 **BUDGET PROCEDURES**

26 Three of the bills specifically pair the phrase “budget reconciliation” with a specific subject:
27 “Kindergarten through Grade Twelve,” “Higher Education,” and “Health.” The fourth bill
28 refers only to “Budget Procedures,” but its short title also includes “budget reconciliation,”

1 indicating that the Legislature plainly intended it to also be a budget reconciliation bill. In
2 each case, ASBA’s claim can only succeed if the challenged provisions have no direct or
3 indirect relation to the subject listed in the title, i.e. the “one general subject” or “one general
4 idea” of the bill’s named subjects: K-12, Higher Education, Health or Budget Procedures.
5 Each challenged provision meets that standard.

6 ASBA admits that budget reconciliation bills are an ordinary and necessary part of
7 the legislative process because “it is often necessary to make statutory and session law
8 changes to effectuate the budget.” Mot. 5 (citing a Senate fact sheet). It goes too far,
9 however, when it essentially argues that every provision in the bill must be tied to a line
10 item of a general appropriation bill. *Id.* The Constitution does not impose such a narrow
11 restriction. As noted above, “any provision directly or indirectly relating to the subject
12 expressed in the title, having a natural connection with and not being foreign thereto, was
13 proper.” *Versluis*, 58 Ariz. at 377.

14 Budget reconciliation bills (“BRBs” or “ORBs”) have been used by the Legislature
15 for decades. They are rarely challenged, probably because all participants in the legislative
16 process seek to benefit from them on occasion. They are not, however, without controversy.
17 *See Bennett*, 206 Ariz. at 520. Consequently, if anything, the phrase “budget reconciliation”
18 does not act to narrow or particularize the subject of the bill, but should put legislators and
19 the public on notice that the bill’s contents could be broad, although limited to the topic
20 usually paired with the term “budget reconciliation”—in this case, K-12, Higher Education,
21 Health and Budget Procedures.

22 The State budget funds education, health and many other activities, and the
23 Legislature must have broad discretion in regulating how those funds are to be spent, or not
24 spent. As discussed above, what is necessary to include in a budget reconciliation bill is a
25 political question that courts should not address. In any event, putting aside ASBA’s narrow
26 definitions, each of the challenged provisions fit within the subject of its title.

27 **HB 2898: K12.** ASBA challenges only three of the one hundred twenty sections of
28

1 HB 2898, sections 12, 21 and 50.³ Sections 12 and 21 each add a statute to Title 15 of
2 A.R.S., which is entitled Education. Each addresses the operations of K-12 schools,
3 including whether public monies can be spent to teach certain curriculum and whether
4 public and charter schools funded by the Legislature can condition employment or
5 attendance on wearing face coverings or obtaining vaccination, thereby potentially reducing
6 overall enrollment and funding and making it more difficult to retain or hire staff. Section
7 50 authorizes the Attorney General to bring an action to recover monies spent in violation
8 of Section 21, and is therefore a proper budget reconciliation provision, regulating how to
9 recoup misspent education funds. The subject of all three provisions is germane to K-12
10 education. That is sufficient to satisfy the title provision of Section 13.

11 **SB 1825: Higher Education.** ASBA challenges only part of one of the seventeen
12 sections of SB 1825, section 2. Section 2 adds two statutes to Title 15 of A.R.S., which is
13 entitled Education, including A.R.S. § 15-1650.05. That statute addresses the operations of
14 the Board of Regents, a public university or a community college, including whether those
15 state-funded entities may condition attendance or employment on wearing face coverings,
16 obtaining a vaccination, or undergoing testing, thereby potentially reducing overall
17 enrollment and making it more difficult to retain or hire staff and requiring the State to
18 increase future funding. Each subject of the statute is germane to higher education, so the
19 bill’s title satisfies the title provision of Section 13.

20 **SB 1824; Health.** ASBA challenges only two of the thirty-six sections of SB 1824,
21 sections 12 and 13. Section 12 amends a statute in Title 36, A.R.S., which is entitled Public
22 Health and Safety, and clarifies whether vaccines subject to emergency use authorization
23 can be required for school attendance and the conditions under which the Department of
24 Health may require a vaccination for school attendance, which both bear on the
25 circumstances under which public funds can be expended to mandate certain public health
26 measures. Section 13 adds a new Article 4.2 to Chapter 6, Title 36, prohibiting local
27

28 ³ “The number of provisions in an enactment is not determinative of its compliance with
the single subject rule.” *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 352 (1999).

1 governments from requiring a COVID-19 vaccination or requiring that businesses require
2 proof of vaccination. Such health mandates require public funds to defend or enforce and
3 thus are germane to public funding for health and safety. Each statute relates directly to an
4 issue of health and safety, so the bill's title satisfies the title provision of Section 13.

5 **SB 1819: Budget Procedures.** ASBA challenges only six of the fifty-two sections
6 of SB 1819, section 4, 5, 33, 35, 39 and 47. "Budget procedures" is a less well-understood
7 subject than K-12, Higher Education, or Health. Nevertheless, a bill entitled "budget
8 procedures;" for budget reconciliation has been a part of the annual budget process for many
9 years. *See, e.g.,* Laws 2006, ch. 346; Laws 2007, ch. 259; ... Laws 2019, ch. 267; Laws
10 2020, ch. 56. Budget procedures means procedures other than specific appropriations to
11 regulate and direct how state money can and cannot be spent, and the management and
12 accountability of those monies. These provisions can apply to many different agencies and
13 even political subdivisions, but they still fall within the subject "budget procedures." Each
14 of the challenged provisions regulate how state monies are spent and how state officers
15 conduct their business.

16 Section 4: Use of budget funds by the Arizona Game and Fish
17 Department to provide assistance with voter registration; voter
18 registration events and database; annual reports to the
Legislature of certain information.

19 Section 5: Spending public monies on antifraud ballot paper; vendor
20 certification; antifraud measures.

21 Section 33: Directing which state officer shall expend state resources in
22 defending state election laws and intervening in actions
challenging election laws.

23 Section 35 Directing the Secretary of State, an office funded by the state
24 budget, to expend state resources notifying a federal body of
certain information.

25 Section 39: Directing certain political subdivisions to not spend public
26 funds or resources to enact or enforce certain regulations
27 impacting private businesses.

28 Section 47: Establishing a special committee consisting of senate members
that will be funded from the state budget.

1 A title need not be a synopsis or complete index of an act, and any provision directly
2 or indirectly relating to the subject is proper. Applying that test, the challenged provisions
3 of all the bills are valid.

4 **B. SB 1819 Satisfies the Single Subject Rule and the Requirements of**
5 **Section 20.**

6 ASBA’s challenge to SB 1819 under the single subject rule and Section 20 also fails.
7 Again, a single subject challenge fails unless a provision of a bill does not relate to the
8 subject reflected in the title of the bill; the subject of the provision need not relate to the
9 subject of every other provision of a bill. *See OCSEA*, 2016-Ohio-478, ¶¶ 16–17, 146 Ohio
10 St. 3d at 319. And “[t]he number of provisions in an enactment is not determinative of its
11 compliance with the single subject rule.” *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 352
12 (1999). Thus, while SB 1819 includes fifty-two sections, that does not mean it addresses
13 more than the single subject included in its title: budget procedures. As explained above,
14 each of the provisions of the bill embrace the “one general subject” and “one general idea”
15 of “budget procedures.” The fact that each section on its own might also be described as
16 addressing another topic, such as election law or health policy, does not preclude them from
17 also fitting within the “budget procedures” title. Therefore, SB 1819 does not violate the
18 single subject rule.

19 **C. HB 2898 Does Not Violate Arizona’s Equal Protection Clause Under**
20 **Article II, Section 13 of the Arizona Constitution.**

21 ASBA also argues that the ban on mask mandates in public and charter schools
22 encompassed in HB 2898 violates the equal protection clause of Article II, Section 13 of
23 the Arizona Constitution, which provides that “[n]o law shall be enacted granting to any
24 citizen, class of citizens, or corporation . . . which, upon the same terms, shall not equally
25 belong to all citizens or corporations.”

26 In support of this proposition, ASBA cites *Shofstall v. Hollins*, 110 Ariz. 88, 90
27 (1973). At issue in *Shofstall* was a school financing system that taxpayers and students
28 alleged was discriminatory because of disparity wealth in school districts resulted in

1 inequality in education for students and an unequal burden on taxpayers. *Id.* at 89. The case
2 at bar is distinguishable from *Shofstall* in several ways. First, and perhaps most obviously,
3 *Shofstall* examined a distinction amongst public school districts, whereas the present case
4 concerns a distinction between public and private schools as a whole. *Id.* at 90. Second,
5 ASBA does not allege that the challenged section of HB 2898 results in an inequality *in*
6 *education*, but rather an inequality in a “safe educational *environment*.” In doing so, ASBA
7 presumes not only that the right to education is a fundamental right, but that the right to a
8 “safe educational environment” is a fundamental right. Simply put, Arizona courts have
9 never reached such a conclusion.

10 What’s more, the Arizona Supreme Court reexamined *Shofstall* in *Roosevelt*
11 *Elementary School District No. 66 v. Bishop*, noting that it was not dispositive and
12 specifically declining to address the question of whether education is even a fundamental
13 right. 179 Ariz. 233, 238 (1994). The *Roosevelt* court reasoned as follows:

14 We agree . . . that *Shofstall* is not dispositive. We do not understand how the
15 rational basis test can be used when a fundamental right has been implicated.
16 They seem to us to be mutually exclusive. If education is a fundamental right,
17 the compelling state interest test (strict scrutiny) ought to apply. On the other
18 hand, if the rational basis test properly applies, education is not a fundamental
19 right.

20 **We need not, however, resolve this conundrum** because where the
21 constitution specifically addresses the particular subject at issue, we must
22 address that specific provision first. . . . [W]e also avoid the difficult questions
23 and uncharted territory that surround equal protection and other governmental
24 functions.

25 *Id.* (emphasis added and citations omitted). Pointedly avoiding addressing the application
26 of Arizona’s equal protection clause, the court instead examined the issue through the lens
27 of the specific education provisions in the Arizona constitution. *Id.*

28 Thus, to grant ASBA’s requested relief, the Court would need to hold for the first
time with no textual support that within the as-of-yet unrecognized fundamental right to
education is a further sub-fundamental right to attend public or charter schools where other
students are required to wear face coverings and/or undergo mandatory vaccination for

1 COVID-19. But whether such requirements are arguably necessary or sufficient to maintain
2 a “safe educational environment” or are otherwise appropriate as a matter of education and
3 health policy is currently a question of great societal debate. It is for the Legislature and the
4 democratic process to decide that debate, not the courts through hurried creation of new
5 fundamental rights. Because the fundamental right ASBA identifies does not exist, the court
6 should apply the rational basis standard.

7 Even if the court applies strict scrutiny, Section 12 of HB 2898 is necessary to
8 achieve a compelling state interest. Generally, maintaining a distinction between public and
9 private schools ensures freedom of choice in education; and specifically in this context, the
10 State has an interest in protecting parental autonomy and parents’ rights to make decisions
11 concerning the education of their children. *See Pierce v. Soc’y of the Sisters of the Holy*
12 *Names of Jesus and Mary*, 268 U.S. 510 (1925) (holding state law requiring public school
13 attendance unconstitutional); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking law
14 prohibiting instruction in any language other than English).

15 Further, states have historically distinguished between public and private schools in
16 a variety of contexts. *See, e.g., Maher v. Roe*, 432 U.S. 464, 477 (1977) (states have the
17 “power to favor public education by funding it.”); *Cornerstone Christian Sch. v. Univ.*
18 *Interscholastic League*, 563 F.3d 127, 139 n. 13 (5th Cir. 2009) (“[P]ublic educational
19 systems may provide and fund programs open only to public schools and to public school
20 students without necessarily infringing the constitutional rights of nonpublic school
21 students.”). The distinction between public and private schools makes sense when
22 considering the funding differences between the two; unlike private schools, public schools
23 are public entities under state law and funded by the state.

24 The Arizona constitution itself singles out public schools in Article 11, Section 1,
25 which provides that “[t]he legislature shall enact such laws as shall provide for the
26 establishment and maintenance of a general and uniform *public* school system” (emphasis
27 added). Arizona also boasts an abundance of legislation which restricts and controls public
28 schools to the exclusion of private schools. *See, e.g., A.R.S. § 15-113* (“A parent of a student

1 in a *public* educational institution has the right to review learning materials and activities in
2 advance.”) (emphasis added); A.R.S. § 15-112 (prohibiting only public school districts and
3 charter schools from teaching certain classes); A.R.S. § 15-110 (prohibiting only public
4 schools from discriminating against students or parents on the basis of religious viewpoint);
5 A.R.S. § 15-104 (requiring only public school districts and charter schools to obtain parental
6 consent before conducting mental health screenings of pupils).

7 The State’s existing statutory distinctions between public and private schools in a
8 wide range of settings further supports its interest maintaining such a distinction. And
9 because a “safe educational environment” is not a fundamental right, HB 2898 does not
10 violate the equal protection clause of the Arizona Constitution.

11 **IV. REMEDY**

12 **A. To the Extent the Court Finds a Violation of the Single Subject Rule, 13 It Should Sever Those Subjects of the BRB Unrelated to the Title.**

14 As explained, the BRBs are consistent with the single subject rule because their
15 provisions each relate to the subject contained in the BRBs’ title. If the Court disagrees,
16 however, the appropriate remedy is to sever the offending portions of the pertinent BRB,
17 such that the BRB then complies with the single subject rule. The Arizona Constitution
18 unambiguously provides that “if any subject shall be embraced in an act which is not
19 expressed in the title, such act shall be void *only as to so much thereof as shall not be*
20 *embraced in the title.*” Ariz. Const., art. IV, pt. 2, § 13 (emphasis added). Thus, even if the
21 Court concludes that a particular provision of one of the BRBs is not germane to the subject
22 of its title, the proper remedy is to sever that provision and allow the remainder of the BRB
23 to stand.

24 Even without that clear constitutional severance provision, severance would be
25 appropriate. The Arizona Supreme Court has adopted a rule that “if part of an act is
26 unconstitutional and by eliminating the unconstitutional portion the balance of the act is
27 workable, only that part which is objectionable will be eliminated and the balance left
28 intact.” *Randolph v. Groscost*, 195 Ariz. 423, 427 (1999) (quoting *State v. Coursey*, 71 Ariz.

1 227, 236 (1950)).⁴ To do so, the Court looks to the text, history, and structure of the act to
2 glean whether the “valid and invalid portions are not so intimately connected as to raise the
3 presumption the legislature would not have enacted one without the other, and the invalid
4 portion was not the inducement for the act.” *Randolph*, 195 Ariz. at 427 (quoting *McCune*
5 *v. City of Phoenix*, 83 Ariz. 98, 106 (1957)).

6 ASBA argues that the only appropriate remedy for violating the single subject rule
7 is to strike down the entire bill, citing *Litchfield*, 125 Ariz. at 226. While the Court of
8 Appeals did so in that case, for at least three reasons the decision does not foreclose a future
9 court from severing where circumstances permit. First, *Litchfield* is inconsistent with the
10 constitutional provision requiring severance.

11 Second, *Litchfield* is inconsistent with the Supreme Court’s severance framework.
12 Rather than attempt to glean whether the Legislature would have passed the appropriations
13 bill at issue, the Court of Appeals simply concluded that whether logrolling occurred is a
14 factual inquiry that would inject the court too deeply into legislative and political process.
15 But that same thing could be said—including by the Court just last month in *Fann*—
16 whenever a court is asked to glean whether an act would have passed without an
17 unconstitutional provision. But the Supreme Court has refused to nullify its severance
18 doctrine in such a fashion, and there is nothing unique about single subject challenges that
19 should exempt them in all cases from severance. As the Supreme Court stated in *Harold*:
20 “It is not claimed and, of course, could not logically be claimed that the entire act is vitiated
21 even if it be true that the act contains matters unrelated to the subject embraced in the title.”
22 *Harold*, 74 Ariz. at 213.

23 Third, the real issue in *Litchfield* was that the Court of Appeals, after conducting a
24 detailed analysis, could not identify a primary purpose linking the unchallenged portions of
25 the bill. That is not the situation here, where each of the challenged bills embrace a primary
26 purpose and subject—primary education, higher education, healthcare, and budget
27

28 ⁴ The Court recently affirmed that this rule also applies to voter initiatives. *Fann v. State*,
2021 WL 3973232 (Ariz. 8/19/2021).

1 procedures. There is nothing in the structure or history of the BRBs suggesting that the
2 Legislature would not have passed them in the absence of any provision going beyond those
3 single subjects. ASBA attempts to point to legislators “holding hostage” the budget
4 reconciliation bill by withholding their vote unless the bills included certain provisions. But
5 there is no evidence that those legislators disagreed with or opposed any of the other
6 provisions in the BRBs. In other words, there is no evidence that legislators in the majority
7 (or the Governor) were logrolled into voting in favor of provisions they did not actually
8 support because provisions they did support were later thrown in. Thus, not only does
9 severance exist here, it is easily applied—any offending provision should be severed.

10 This Court would not be the first to apply severance in a single subject challenge.
11 The Ohio Supreme Court has also done so, holding that “the appropriate remedy when a
12 legislative act violates the one-subject rule is generally to sever the offending portions of
13 the act ‘to cure the defect and save the portions’ of the act that do not relate to a single
14 subject.” *OCSEA*, 2016-Ohio-478, ¶ 22, 146 Ohio St. at 320. The court explained that
15 “[w]hen an act contains more than one subject, the court may determine which subject is
16 primary and which is an unrelated add-on.” *Id.* Severance will not apply only where the
17 court is unable to “carve out a primary subject by identifying and assembling what it
18 believes to be key or core provisions of the bill at issue.” *Id.* As explained herein, that is
19 not the current situation.

20 **B. If the Court Finds that the BRBs Violate the Single Subject Rule, Such a**
21 **Ruling Should Only Apply Prospectively.**

22 No Arizona court has ever applied the single subject rule to BRBs, and thus the
23 Legislature for decades has relied upon BRBs and Omnibus Reconciliation Bills (“ORBs”)
24 as vital tools to carry out its democratic duties. Thus, should the Court conclude that BRBs
25 are susceptible to single subject challenge, and that any of the BRBs here violate the single
26 subject rule, the Court should only apply such ruling prospectively, thereby allowing the
27 BRBs at issue in this case to stand. “Whether an opinion will be given prospective
28 application only is a policy question within this court’s discretion.” *Fain Land & Cattle Co.*

1 v. *Hassell*, 163 Ariz. 587, 596 (1990); *Turken v. Gordon*, 223 Ariz. 342, 351, ¶ 44 (2010).

2 Prospective application is appropriate where newly articulated standards or widely
3 misunderstood standards have caused parties to perform in a certain manner. The factors
4 used when considering prospective application are:

- 5 1. Whether the decision establishes a new legal principle by
6 overruling clear and reliable precedent or by deciding an issue
7 whose resolution was not foreshadowed;
- 8 2. Whether retroactive application will further or retard
9 operation of the rule, considering the prior history, purpose,
10 and effect of the rule;
- 11 3. Whether retroactive application will produce substantially
12 inequitable results.

13 *Fain Land & Cattle Co.*, 163 Ariz. at 596 (concluding that new holding regarding legislative
14 authority would apply only prospectively).

15 It is indisputable that, for decades and on many occasions, the Legislature has used
16 BRBs and ORBs to complete the budgeting process. *See Bennett*, 206 Ariz. at 520. Despite
17 that repeated use, the Arizona Supreme Court has never defined or foreshadowed the legal
18 principles applying to BRBs or otherwise analyzed their constitutionality under the single
19 subject rule. Quite the opposite actually. In *Bennett*, the Court refused to address the
20 application of the single subject rule to ORBs, leaving in place provisions that arguably
21 violated the single subject rule. It is hardly surprising, then, that the Legislature
22 subsequently believed that the courts would not upset the legislative budgeting process by
23 forcing it to separate out BRBs into many separate bills.

24 If the Court is now concerned that legislative use of BRBs may someday result in
25 logrolling, outlawing BRBs on a forward-looking basis addresses that concern, and the
26 Legislature will adjust its practices accordingly. But applying a new single subject
27 requirement retroactively, thereby upsetting not just the 2021 budgeting process but
28 potentially scores of BRBs and ORBs passed in the last several decades, would do nothing
to address a future logrolling concern. Potentially upsetting scores of BRBs and ORBs, with
no warning, would be highly inequitable to the democratic process in Arizona over the last

1 several decades. Thus, should the Court impose the dramatic shift in the legislative process
2 that ASBA seeks, it should do so only prospectively. *See Turken*, 223 Ariz. at 351 (“We
3 today overrule no prior decision. But we recognize that the consideration prong of
4 the *Wistuber* test has been widely misunderstood during the past two decades and that our
5 cases have never squarely addressed that issue.”).

6 **V. CONCLUSION.**

7 Many of the funding issues contained in the BRBs—whether publicly funded schools
8 should require masking and mandatory vaccination for school attendance, how schools use
9 public funds to teach about race and discrimination, and how state resources are allocated
10 to fund the administration and defense of Arizona’s election laws—are currently at the
11 center of political and social debate in Arizona. But this case is not about the underlying
12 merits of any of those issues. Rather, this case is only about whether the Legislature, in
13 connection with the budgeting process, is subject to and failed to comply with the
14 Constitution’s technical and permissive title and single subject requirements. Regardless of
15 the underlying social issues, the Court should always be reluctant to upset the democratic
16 process. The Court should therefore, and for the reasons stated herein, deny ASBA’s
17 requested relief.

18 DATED this 2nd day of September, 2021.

19 FENNEMORE CRAIG, P.C.

20
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12 **ARIZONA SUPERIOR COURT**
13 **MARICOPA COUNTY**

14 ARIZONA SCHOOL BOARDS) No. CV2021-012741
15 ASSOCIATION, INC., an Arizona nonprofit)
corporation, et al.,) **REPLY IN SUPPORT OF MOTION FOR**
16) **PRELIMINARY INJUNCTION**
Plaintiffs,)
17 v.) (Assign to the Hon. Katherine Cooper)
18 STATE OF ARIZONA, a body politic,)
19 Defendant.) (Oral Argument scheduled for
September 13, 2021 at 1:30 p.m.)
20)

1 In its Response to Plaintiffs’ Motion for Preliminary Injunction, the State gives short
2 shrift to the weighty dictates of our Constitution. Article IV, pt. 2, § 13 imposes important
3 limitations on the Legislature’s ability to pass laws that are not distinct and adequately noticed.
4 But the State would have this Court adopt a new, dangerously lax standard for lawmaking which,
5 if adopted, would gut those Constitutional requirements.

6 **Argument**

7 **I. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.**

8 The State’s Response bypasses controlling Arizona case law on the meaning of the title
9 requirement of article IV, pt. 2, § 13 in favor of relying on Ohio and Illinois cases. It is no surprise
10 the State avoids Arizona authority; each of the challenged BRBs present the precise evil the title
11 requirement is meant to avoid, and SB1819 violates the single subject rule.

12 **A. The Legislature violated the Constitution’s title requirement.**

13 The title requirement “was designed to enable legislators and the public upon reading the
14 title to know what to expect in the body of the act so no one would be surprised” about its
15 contents. *State v. Sutton*, 115 Ariz. 417, 419 (1977) (quotations omitted). The title need not be a
16 complete index, but must “put[] people on notice as to the contents of the act,” *id.*, and **can’t be**
17 **misleading**. *Am. Est. Life Ins. Co. v. State, Dept. of Ins.*, 116 Ariz. 240, 242 (App. 1977); *White*
18 *v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209 (1976) (by confining legislation to the subject
19 in the title, members of the legislature and the people will not be misled).¹

20 Does a bill titled “Relating to State Budget Procedures” [SB1819] give notice that it
21 includes new, substantive legislation covering everything from the definition of “newspaper” to
22 condominium termination requirements, and from investigation of social media platforms to dog
23 racing permitting? Of course not. Yet that is exactly what SB1819 and the challenged provisions

24 _____
25 ¹ The State cites cases from foreign jurisdictions, claiming [at 5] that courts will only
26 invalidate statutes if there was “a manifestly gross and fraudulent violation.” This standard
conflicts with the dictates of our appellate courts, which have repeatedly invalidated legislation
when, as here, the title does not provide adequate notice of a bill’s contents.

1 of the other BRBs do. Their titles give no notice that they would cover more than budget
2 procedures or budget reconciliation. The BRBs titles misrepresent their contents.

3 *State ex rel. Conway v. Versluis*, 58 Ariz. 368, 377 (1941) doesn't help the State. There,
4 the title of the act clearly stated that it dealt with, among other things, the establishment of special
5 funds for state trust lands, and for the disposition of those funds. *Id.* at 373. The court rejected a
6 challenge to a provision in the law that dealt with investment of those funds. The court found
7 that one reading the title would be put on notice that the act would include provisions about how
8 the funds would be handled. Here, no reasonable person would expect that a ban on mask
9 mandates or other COVID mitigation measures, for example, would be in bills with titles
10 clarifying that they deal with "budget reconciliation."

11 The State concedes that the titles of each BRB enumerate the statutes that each BRB
12 amends before stating that the bills are for "budget reconciliation." When the title of an
13 amendatory act "particularizes some of the changes to be made by the amendment, the legislation
14 is limited to the matters specified and anything beyond them is void, however germane it may
15 be to the subject of the original act." *Hoyle v. Superior Ct.*, 161 Ariz. 224, 230 (App. 1989);
16 *Sutton*, 115 Ariz. at 419-20. The challenged BRB provisions do not relate to budget
17 reconciliation. The State apparently claims the Court should ignore the limiting phrase "budget
18 reconciliation," and consider only whether the bills deal in any way with the "subject" of K-12
19 education, higher education, health, or "budget procedures." The Court should reject this
20 argument. *See White*, 113 Ariz. at 212 (courts cannot expand titles beyond what the legislation
21 provides). Here the titles explain that the bills are limited to "budget reconciliation," and the
22 bills' provisions must be for the purpose of "effectuating the budget." [See Mot. at 5, Exs. 3-5]²

23 ² The State ignores that BRBs only exist because, under art. IV, pt. 2, § 20, substantive law
24 may not be put in the appropriations bill, also known as the "feed bill." The appropriations bill
25 for the last legislative session was SB1823. *See* SB1823, 55th Leg., 1st Reg. Sess. (Ariz. June
26 30, 2021) <https://www.azleg.gov/legtext/55leg/1r/laws/0408.htm>. Plaintiffs explain and provide
examples of why a BRB is necessary to carry out the budget. [Mot. at 5] Many other examples

1 Each of the challenged provisions violates the title requirement of Section 13. *Am. Est. Life Ins.*
2 *Co.*, 116 Ariz. 240 (reference in title to “insurance” did not save challenged provisions).

3 The State’s Response concocts [at 8-9] after-the-fact rationalizations of how a ban on
4 mask mandates in K-12 schools or COVID mitigation measures in universities might affect
5 enrollment or staffing and, in turn, possibly affect State finances. And the State’s theory about
6 SB1824’s ban on local vaccine requirements is even more farfetched. It claims [at 9] that vaccine
7 mandates might require public funds to defend or enforce such requirements. These explanations
8 cannot save the challenged provisions.

9 First, each of these rationalizations was invented by counsel after-the-fact, with no
10 citation to the legislative history, let alone statutory language.³ Nor are the statutory changes
11 needed to implement or reconcile the budget. More to the point, adopting the State’s position
12 would eviscerate the protections in art. IV, pt. 2, § 13. *Litchfield Elem. Sch. Dist. No. 79 of*
13 *Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980) (while the single subject rule and title
14 requirement are “interpreted liberally,” they shouldn’t be interpreted “so foolishly liberal[ly] as
15 to render the constitutional requirements nugatory”). Such an interpretation would depart far
16 from *Bennett v. Napolitano*, which cautioned that similar BRBs appeared to violate the single
17 subject rule. 206 Ariz. 520, 528 ¶ 39 (2003). If left unchecked, the Legislature could cram any

18 _____
19 are apparent if one compares the appropriations bill to the BRBs. For example, as reflected in
20 the relevant bill excerpts attached as Ex. 1, SB1823, sec. 83 provides an appropriation of
21 \$140,407,900 for new school construction. Without direction regarding the price per square foot
22 and which schools qualify, this appropriation could not be effectuated. Then, in HB2898, sec.
23 70, at A.R.S. § 41-5741(D)(3)(c), the Legislature changes the per square foot formula for new
school construction and in sec. 112, identified the school districts that qualified for the increased
new school construction amounts. [*Id.*] These measures spelled out in HB2898 are necessary to
implement or effectuate the appropriation made in SB1823 (the “feed bill”).

24 ³ The State’s redrafting [at 9] of SB1819’s provisions are egregious—and revealing. It
25 inserts language to *manufacture* a monetary tie to each BRB provision where the provisions say
26 nothing about the use of funds or spending public money. Beyond that, the State’s definition [at
9] of “budget procedures” is nonsensical. The title provision must provide notice to legislators
and the public of what to expect in the act. The public wouldn’t know that a bill titled “Budget
Procedures” includes these provisions.

1 controversial legislation into a BRB at the end of session (with no hearings). An attorney
2 defending the State could then argue that the policy provisions affect some economic interest of
3 the State. But that’s not the constitutional standard. And counsel’s arguments of budget ties are
4 not evidence. Rather, there is evidence of the real reasons these provisions, some of which failed
5 to pass in the regular legislative process, were in the BRBs. [See Compl. ¶¶ 86-94] Each
6 challenged provision in the BRBs violate the title requirement and is thus void.

7 **B. SB1819 also violates the single subject rule.**

8 The State does not cite a single Arizona case in its Response [at 10] to Plaintiffs’ single
9 subject claim. But Arizona courts have long recognized that the single subject rule is “designed
10 to prevent the evils of omnibus bills, surreptitious and ‘hodgepodge’ legislation.” *Litchfield*, 125
11 *Ariz.* at 223–24. SB1819 exemplifies the evil this rule is meant to deter. *See Ariz. Chamber of*
12 *Com. & Indus. v. Kiley*, 242 *Ariz.* 533, 541 ¶ 30 (2017).

13 The State claims that the provisions in SB1819 “embrace” the “one general idea” of
14 “budget procedures.” But no amount of creative lawyering can explain how scores of completely
15 unrelated provisions covering dog racing permits, voter registration, the Governor’s emergency
16 powers, and the definition of “newspaper,” (among other topics) cover a single subject.

17 **C. SB1819 is not severable.**

18 The State’s response repeatedly conflates the title requirement and the distinct single
19 subject requirement in art. IV, pt. 2, § 13. *See, e.g.,* Leshy, *The Arizona State Constitution* (2d
20 ed. 2013) at 155 (“the adequate title requirement is independent of the one-subject principle[.]”),
21 attached as Ex. 2. When a bill violates the title requirement, the plain language of the constitution
22 states that the act is “void only as to so much thereof as shall not be embraced in the title.” Art.
23 IV, pt. 2, § 13. Thus, for HB2898, SB1824, and SB1825, Plaintiffs seek only to void the
24 challenged provisions.⁴

25 ⁴ This was the relief obtained in another case in which the Legislature passed a law that
26 violated the title requirement. The State – through the Attorney General – stipulated that the

1 When an act violates the single subject rule, however, the whole act must fall. *Litchfield*,
2 125 Ariz. at 226. The court in *Litchfield* explained why the usual doctrine of severability cannot
3 be applied to a single subject rule violation. There, the act was “a miscellany” with no “realistic
4 commonality,” so the court couldn’t engage in a factual inquiry into what was the dominant
5 subject of the act. *Id.* at 225-26. The same is true of SB1819. There is no way to glean the “single
6 subject” of SB1819. Is it dog racing? Election security? The Governor’s emergency powers?
7 Condominium termination? There is no way to know because the Legislature cobbled together
8 a “miscellany” with no “realistic commonality.” The State asks the Court to ignore *Litchfield*
9 based on policy arguments and cases from other jurisdictions. But the Court should reject this
10 invitation to overlook controlling precedent. As in *Litchfield*, “the enactment in question is
11 infected by reason of the combination of its various elements rather than by any invalidity of one
12 component” and “the entire act must fall.” *Id.*

13 **D. HB2898 violates public school students’ equal protection rights.**

14 Because HB2898 substantially interferes with public school students’ fundamental right
15 to an education in a reasonably safe setting, it can be upheld only if it is necessary to serve a
16 compelling state interest. The State is simply wrong when it argues that education is not a
17 “fundamental right” in Arizona. Though *Shofstall v. Hollins* misapplied the standard of scrutiny
18 and a later case declined to “resolve this conundrum,” the Supreme Court has never overruled
19 its holding that “the constitution does establish education as a fundamental right[.]” 110 Ariz.
20 88, 90 (1973); *see also Magyar By & Through Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp.
21 1423, 1442 (D. Ariz. 1997) (education is a fundamental right under the Arizona Constitution).

22 The State also splits hairs [at 11] between the right to an “education” and the right to a
23 “safe educational environment.” But it is hard to imagine a more basic component of a student’s
24 education than their physical safety at school. This is even truer here because the very safety

25 _____
26 portions of the law not referenced in the title were void, but the remainder could take effect. [*See*
Stip. and Order, Staropoli v. State, Maric. Cty. Sup. Ct., No CV2013-009991, attached as Ex. 3]

1 precautions HB2898 forbids are recommended by federal *and state* public health experts.⁵

2 Even if education weren't a fundamental right, HB2898's distinction between public and
3 private schools is irrational and arbitrary. The State hastily concludes [at 12] that "the court
4 should apply the rational basis standard," but doesn't even try to offer a rational basis for the
5 distinction. The State's half-hearted argument [at 12] that "states have historically distinguished
6 between public and private schools in a variety of contexts" ignores the context of HB2898,
7 which interferes with public school students' physical safety at school. None of the statutory
8 examples the State provides deals with students' safety in school. [Resp. at 12-13 (citing
9 religious exemptions, prohibited curriculum, and parental consent for mental health screenings)]
10 The State also cites cases in which states favored public schools over private schools, because
11 the state funds public schools. The opposite is true here. HB2898 favors *private* schools by
12 allowing only private schools to adopt COVID-19 policies to keep their students safe. According
13 to the State [at 12], this results from its interest in "protecting parental autonomy," but it offers
14 no basis for distinguishing between public and private school parents' "autonomy."⁶

15 In short, the State offers no governmental interest to justify HB2898's distinction between
16 the health and safety of children in public and private schools.

19 ⁵ Centers for Disease Control and Prev., Guidance for COVID-19 Prevention in K-12
20 Schools, Aug. 5, 2021 [https://www.cdc.gov/coronavirus/2019-ncov/community/schools-
21 childcare/k-12-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html) ("CDC recommends universal indoor masking for all teachers,
22 staff, students, and visitors to K-12 schools, regardless of vaccination status."); Ariz. Dep't of
23 Health Servs., Schools (K-12) Guidance for COVID-19, [https://www.azdhs.gov/covid19/
24 index.php#schools-guidance](https://www.azdhs.gov/covid19/index.php#schools-guidance) (last visited Sept. 9, 2021) ("All schools should implement and
25 layer prevention strategies and should prioritize universal and correct use of masks and physical
26 distancing.").

⁶ The State's claimed interests are puzzling. The State would have an interest in promoting
public health (including mitigating the spread of disease), yet HB2898 *undermines* that interest.
Cf. Maricopa Cty. Health Dep't v. Harmon, 156 Ariz. 161, 166 (App. 1987) (rejecting argument
there is "no compelling state interest in taking limited and temporary steps to combat a
reasonably perceived risk of the spread of measles absent a serologically confirmed case").

1 **II. Plaintiffs’ Claims Are Justiciable.**

2 To avoid the merits of Plaintiffs’ claims, the State argues that whether the BRBs violate
3 article IV, part 2, § 13 of the Arizona Constitution is a non-justiciable “political question.” Not
4 so. Non-justiciable political questions “involve decisions that the constitution commits to one of
5 the political branches of government and raise issues not susceptible to judicial resolution
6 according to discoverable and manageable standards.” *Forty-Seventh Legislature of State v.*
7 *Napolitano*, 213 Ariz. 482, 485 ¶ 7 (2006). Neither issue is present here.

8 First, Plaintiffs’ claims do not involve decisions solely committed to the Legislature.
9 Whether to enact policy is a political question. But whether the Legislature complied with
10 constitutional mandates when passing that legislation isn’t. Determining “whether a branch of
11 state government has exceeded the powers granted by the Arizona Constitution requires that
12 [courts] construe the language of the constitution and declare what the constitution requires.” *Id.*
13 ¶ 8; *see also Mesnard v. Campagnolo*, 251 Ariz. 244, __ ¶ 27 (2021) (legality of legislator’s
14 actions—not his policy decisions—were matters “constitutionally committed to the judicial
15 branch, not the legislative branch, and [were] therefore justiciable”).

16 The State posits [at 3] that “whether the Legislature should include particular items in a
17 budget or enact particular legislation . . . clearly are political questions.” (citing *Brewer v. Burns*,
18 222 Ariz. 234, 239 ¶ 21 (2009)). But Plaintiffs’ claims don’t turn on whether the Legislature
19 should or shouldn’t fund state programs in the budget. In deciding whether the challenged BRB
20 provisions are adequately reflected in the title of the bills, it is of no moment that the challenged
21 provisions are bad policy. Determining whether legislation is logically connected to “budget
22 reconciliation” is no different from the court’s determination whether an act constituted an “item
23 of appropriation of money” under the Arizona Constitution in *Forty-Seventh Legislature*, 213
24 Ariz. at 485 ¶ 7. There, as here, “[t]he political question doctrine . . . provides no basis for judicial
25 abstention[.]” *Id.*

26 At its core, the State’s position is that the BRBs need not comply with the title and single

1 subject requirement. But the Arizona Constitution says otherwise. Ariz. Const. art. IV, pt. 2, §
2 13 (“*Every act shall embrace but one subject and matters properly connected therewith, which*
3 *subject shall be expressed in the title.*”) (emphasis added). Just because the Legislature has the
4 power to adopt the state budget doesn’t mean courts are powerless to review any laws passed in
5 so-called “budget reconciliation” bills. If the State had its way, the Legislature could pass
6 literally any law through a BRB and insulate itself from judicial review. That’s not how our
7 system of checks and balances works. “Although the legislature has broad fiscal powers,” that
8 power is subject to constitutional limitations that courts can and should enforce. *See, e.g., Indus.*
9 *Comm’n of Arizona v. Brewer*, 231 Ariz. 46, 50 ¶ 14 (App. 2012); *Arizona Ass’n of Providers*
10 *for Persons with Disabilities v. State*, 223 Ariz. 6, 14 ¶¶ 24-25 (App. 2009) (rejecting State’s
11 argument that courts lack power to review the Legislature’s budgeting decisions).

12 Second, Plaintiffs are not asking the Court to break new ground. Arizona courts have been
13 applying the title and single subject requirements of our constitution since statehood. “[W]ell-
14 established legal principles exist to guide” the Court in deciding whether the Legislature met its
15 constitutional requirements under article IV, part 2, § 13. *Arizona Indep. Redistricting Comm’n*
16 *v. Brewer*, 229 Ariz. 347, 354 ¶ 30 (2012); [see Mot. at 10-14]. At bottom, determining the
17 Legislature’s compliance with the constitution’s title and single-subject requirements falls
18 squarely within this Court’s powers. Plaintiffs’ claims are justiciable.

19 **III. Plaintiffs Have Standing to Bring Their Claims.**

20 The State next argues that Plaintiffs lack standing to challenge SB1819 because “they
21 have not shown direct harm to themselves from any of [the challenged] provisions.”⁷ The State
22 is wrong, and it misunderstands Plaintiffs’ claims challenging SB1819.

23 To begin, “standing in Arizona is not a constitutional mandate,” *Armory Park*
24 *Neighborhood Ass’n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6 (1985) (citation omitted),

25 ⁷ The State does not dispute that Plaintiffs have standing to challenge HB2898, SB1824, or
26 SB1825. As detailed in the Motion [at 20-25], Plaintiffs have standing to challenge those BRBs.

1 but is a “prudential” matter of judicial restraint “to ensure that our courts do not issue mere
2 advisory opinions, that the case is not moot and that the issues will be fully developed by true
3 adversaries.” *Id.* Arizona courts “require at a minimum that each party possess an interest in the
4 outcome,” but do not require “rigid adherence” to federal standing requirements. *Id.*; *Dobson v.*
5 *State ex rel., Comm’n on App. Ct. Appointments*, 233 Ariz. 119, 122 ¶ 9 (2013).

6 Organizational plaintiffs can assert: (1) representational standing on behalf of their
7 members, and (2) direct standing in their own right. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d
8 1097, 1101 (9th Cir. 2004).⁸ “[A]n organization has direct standing to sue where...defendant’s
9 behavior has frustrated its mission and caused it to divert resources in response to that frustration
10 of purpose.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021).

11 Plaintiffs allege particularized injuries they will suffer if SB1819 becomes effective.
12 Many Plaintiffs actively participate in the legislative process through lobbying and advocacy.
13 [Mot. at 24; Compl. ¶¶ 9-21; Lewis Decl. ¶ 3; Edman Decl. ¶ 10; Lujan Decl. ¶ 7] By trading
14 their votes behind closed doors to slip pet policies into BRBs, the Legislature has thwarted
15 Plaintiffs’ work in the Legislature. [*E.g.*, Edman Decl. ¶¶ 11-13; Kotterman Decl. ¶¶ 9-12]
16 Contrary to the State’s contention [at 2] that “Plaintiffs have failed to demonstrate a causal nexus
17 between SB1819 or any individual provision thereof and any specific injury to themselves,”
18 allowing SB1819 to take effect would irreparably harm Plaintiffs’ ability to participate in our
19 political system. The State also ignores that Plaintiffs challenge Section 39, which bans localities
20 from adopting any COVID-19 mitigation measures that “impact” schools, including mask
21 requirements. If this provision goes into effect, local jurisdictions will lose their ability to protect
22 Plaintiffs from a deadly virus and the individual plaintiffs who are teachers or have children in
23 schools will suffer an increased risk of acquiring COVID. [*See* Compl. ¶¶ 75-80]

24 As organizations, Plaintiffs CAA and AZAN also have direct standing to challenge
25

26 ⁸ Plaintiffs ASBA and AEA assert representational standing on behalf of their members in
challenging HB2898 and SB1825, which the State doesn’t dispute.

1 SB1819 because it frustrates their missions and drains their resources. *Valle del Sol Inc. v.*
2 *Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013) (advocacy organizations had standing to challenge
3 Arizona law that “has ‘perceptibly impaired’ their ability to carry out their missions”). By
4 inserting dozens of policy issues unrelated to the budget into the BRBs, the Legislature has
5 frustrated CAA’s mission and “forced [CAA] to divert resources in response.” [Lujan Decl. ¶
6 11] AZAN likewise “diverted significant time and resources analyzing the impact” of SB1819,
7 and devoted staff time responding to the BRBs. [Edman Decl. ¶ 6] AZAN’s “ability to advocate
8 for and defend a truly representative political system was impeded this session by the policies
9 passed through” the BRBs in the dead of night. [*Id.* ¶ 7] The State doesn’t dispute any of this.

10 The State also contends [at 2]—with no legal support—the Court must identify a “specific
11 injury” to Plaintiffs “on a provision-by-provision basis.” But Plaintiffs need not show
12 “prejudice” to challenge a statute on title grounds. They need only “show that the title did not
13 give adequate notice” of the act’s content. *Am. Est. Life Ins. Co.*, 116 Ariz. at 243. What’s more,
14 Plaintiffs challenge SB1819 in its *entirety* on single-subject grounds. The State’s assertion that
15 the Court must consider standing on a “provision-by-provision basis” would undermine the
16 purpose of the rule, which is “designed to prevent the evils of omnibus bills, surreptitious and
17 ‘hodgepodge’ legislation.” *Litchfield*, 125 Ariz. at 224. “Without standing to raise the
18 constitutional question” in a declaratory judgment action, Plaintiffs “would have no means of
19 redress.” *Dobson*, 233 Ariz. at 122 ¶ 11.

20 In all events, even if Plaintiffs did not have standing to challenge SB1819 (they do), the
21 Court should waive standing because this claim involves issues of “great public importance that
22 are likely to recur.” *Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 217 n.1 (1986).

23 **IV. The Court Should Reject the State’s “Prospective Only” Argument and Enjoin the**
24 **BRBs at Issue.**

25 The State argues that even if the BRBs violate the single subject and title requirements,
26 the Court’s ruling should apply “prospectively” only. That argument lacks merit. In the rare case

1 when an Arizona court will apply its decision prospectively only, it considers: (1) whether its
2 opinion overturns settled precedent or decides a new issue “whose resolution was not
3 foreshadowed”; (2) whether “retroactive application will further or retard operation of the rule”
4 and its purpose, and (3) “[w]hether retroactive application will produce substantially inequitable
5 results.” *Fain Land & Cattle Co. v. Hassell*, 163 Ariz. 587, 596-97 (1990). None of these factors
6 favor a prospective-only application.

7 Plaintiffs are not seeking to establish a new legal principle. They ask the Court to apply
8 longstanding Arizona law to the BRBs, and *Bennett* gave the Legislature fair warning that the
9 single subject and title requirements apply to budget bills. Far from “refus[ing] to address the
10 application of the single subject rule to ORBs” [Resp. at 16], the Supreme Court raised the issue
11 in *Bennett* even though the parties avoided it, and directly foreshadowed application of the rule
12 to BRBs. *Id.* at 528, ¶ 36 n. 8, 9. Applying the single subject rule to the BRBs at hand also would
13 further the rule’s purpose by invalidating logrolled provisions and deterring future violations,
14 and it would inflict no injustice or hardship. The State claims [at 16] that the court’s decision
15 would invalidate “potentially scores of BRBs and ORBs passed in the last several decades.” But
16 the Court need only apply the single subject rule to the challenged BRBs, and in all events, any
17 challenge to a BRB or ORB from prior years is likely time-barred. *See* A.R.S. § 12-821 (one-
18 year statute of limitations for all actions against public entity).

19 **V. The Other Injunction Factors Favor an Injunction.**

20 Finally, the State doesn’t dispute that Plaintiffs satisfy the other injunction factors. For
21 the reasons in the Motion [at 22-25], Plaintiffs will suffer irreparable harm absent an injunction,
22 the balance of hardships tips in their favor, and an injunction favors the public interest.

23 **Conclusion**

24 For these reasons and the reasons in the Motion, the Court should enjoin HB2898, §§ 12,
25 21, and 50; SB1825, § 2 (A.R.S. § 15-1650.05); SB1824, §§ 12 and 13; and SB1819.

1 RESPECTFULLY SUBMITTED this 10th day of September, 2021.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ Roopali H. Desai

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5 D. Andrew Gaona
6 Kristen Yost

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EXHIBIT 1

Senate Engrossed

general appropriations act; 2021-2022

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 408

SENATE BILL 1823

AN ACT

AMENDING LAWS 2020, CHAPTER 56, SECTION 8; APPROPRIATING MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 amount of delinquent account write-offs determined to be uncollectible for
 2 fiscal year 2020-2021.

3 The department may not transfer any monies to or from the tax fraud
 4 prevention line item without prior review by the joint legislative budget
 5 committee.

6 The operating lump sum appropriation includes \$2,000,000 and 25 FTE
 7 positions for additional audit and collections staff.

8 On or before November 1, 2021, the department shall report the
 9 results of private fraud prevention investigation services during fiscal
 10 year 2020-2021 to the joint legislative budget committee. The report
 11 shall include the total number of fraudulent returns prevented and the
 12 total dollar amount of fraudulent returns prevented during fiscal year
 13 2020-2021.

14 Sec. 83. SCHOOL FACILITIES BOARD

	<u>2021-22</u>
15 FTE positions	17.0
16 Operating lump sum appropriation	\$ 1,771,100
17 New school facilities debt service	67,176,800
18 Building renewal grants	107,500,000
19 Kirkland elementary replacement	
20 school	3,000,000
21 Yuma union high school	16,515,200
22 New school facilities	<u>140,407,900</u>
23 Total appropriation – school facilities	
24 board	\$336,371,000
25 Fund sources:	
26 State general fund	\$336,371,000

27 Pursuant to section 35-142.01, Arizona Revised Statutes, any
 28 reimbursement received by or allocated to the school facilities board
 29 under the federal qualified school construction bond program in fiscal
 30 year 2021-2022 shall be deposited in or revert to the state general fund.
 31

32 At least thirty days before any monies are transferred out of the
 33 new school facilities debt service line item, the school facilities board
 34 shall report the proposed transfer to the director of the joint
 35 legislative budget committee.

36 Pursuant to section 15-2041, Arizona Revised Statutes, the amount
 37 appropriated for new school facilities shall be used only for facilities
 38 and land costs for school districts that received final approval from the
 39 school facilities board on or before December 15, 2020.

40 The amount appropriated in the Kirkland elementary replacement
 41 school line item shall be distributed to the Kirkland elementary school
 42 district to replace an existing school building, including necessary
 43 demolition of existing buildings.

K-12 education; budget reconciliation; 2021-2022.

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 404
HOUSE BILL 2898

AN ACT

AMENDING SECTIONS 5-568, 15-119, 15-181 AND 15-185, ARIZONA REVISED STATUTES; AMENDING SECTION 15-203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 2; AMENDING SECTIONS 15-213.01 AND 15-213.03, ARIZONA REVISED STATUTES; REPEALING SECTION 15-240, ARIZONA REVISED STATUTES; AMENDING SECTION 15-251, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 3; AMENDING SECTIONS 15-341 AND 15-342, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-342.05; AMENDING SECTION 15-350, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 4; AMENDING SECTIONS 15-393, 15-393.01, 15-481 AND 15-491, ARIZONA REVISED STATUTES; AMENDING SECTION 15-505, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2021, CHAPTER 2, SECTION 5; AMENDING SECTION 15-512, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 6; AMENDING SECTION 15-514, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 2, SECTION 7; AMENDING TITLE 15, CHAPTER 7, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 15-711.01 AND 15-717.02; AMENDING SECTION 15-746, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 7, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-747; AMENDING SECTIONS 15-774, 15-816, 15-816.01 AND 15-901, ARIZONA REVISED STATUTES; AMENDING SECTION 15-901.08, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2021, CHAPTER 299, SECTION 4; AMENDING SECTIONS 15-907 AND 15-911, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 9, ARTICLE 2, ARIZONA REVISED

1 hundred pupils. The total number of pupils in grades nine through twelve
2 in the district shall determine the square footage factor to use for net
3 new pupils. The ~~school facilities~~ board may modify the square footage
4 requirements prescribed in this subdivision for particular schools based
5 on any of the following factors:

6 (i) The number of pupils served or projected to be served by the
7 school district.

8 (ii) Geographic factors.

9 (iii) Grade configurations other than those prescribed in this
10 subdivision.

11 (iv) Compliance with minimum school facility adequacy requirements
12 established pursuant to section ~~15-2011~~ 41-5711.

13 (c) Multiply the product obtained in subdivision (b) of this
14 paragraph by the cost per square foot. The cost per square foot is ~~\$90~~
15 \$270.24 for preschool children with disabilities, kindergarten programs
16 and grades one through six, ~~\$95~~ \$285.30 for grades seven and eight and
17 ~~\$110~~ \$330.30 for grades nine through twelve. The cost per square foot
18 shall be adjusted annually for construction market considerations based on
19 an index identified or developed by the joint legislative budget committee
20 as necessary but not less than once each year. EACH ANNUAL CONSTRUCTION
21 MARKET ADJUSTMENT APPLIES TO ALL PROJECTS APPROVED BY THE SCHOOL
22 FACILITIES BOARD UNDER THIS SUBSECTION DURING THAT YEAR. The ~~school~~
23 ~~facilities~~ board shall multiply the cost per square foot by 1.05 for any
24 school district located in a rural area. The ~~school facilities~~ board may
25 only modify the base cost per square foot prescribed in this subdivision
26 for particular schools based on geographic conditions or site
27 conditions. ANY EXTRA MONIES RECEIVED AS A RESULT OF A MODIFICATION BASED
28 ON GEOGRAPHIC CONDITIONS OR SITE CONDITIONS MAY BE USED TO ADDRESS
29 UNFORESEEN COSTS AT ANY STAGE OF A PROJECT UNDER THIS SECTION. For the
30 purposes of this subdivision, "rural area" means an area outside a
31 thirty-five-mile radius of a boundary of a municipality with a population
32 of more than fifty thousand persons.

33 (d) Once the school district governing board obtains approval from
34 the ~~school facilities~~ board for new facility construction monies,
35 additional portable or modular square footage created for the express
36 purpose of providing temporary space for pupils until the completion of
37 the new facility and any additional space funded by the school district
38 shall not be included by the ~~school facilities~~ board for the purpose of
39 new construction funding calculations. On completion of the new facility
40 construction project, any additional space funded by the school district
41 shall be included as prescribed by this chapter and, if the portable or
42 modular facilities continue in use, the portable or modular facilities
43 shall be included as prescribed by this chapter, unless the ~~school~~
44 ~~facilities~~ board approves their continued use for the purpose of providing

1 each year thereafter to the governor, the president of the senate and the
2 speaker of the house of representatives and provide a copy of these
3 reports to the secretary of state. The department of education, the
4 department of administration and any grant recipient shall provide any
5 information, including student finance and enrollment data, that is deemed
6 necessary by the program administrator to complete the reports pursuant to
7 this paragraph. The reports must include all of the following:

8 (a) If applicable, the best practices used by grant recipients to
9 transport K-12 students to schools outside of attendance boundaries.

10 (b) A list of the grant recipients and the amounts and purposes of
11 the grants.

12 (c) The number of students impacted per grant recipient.

13 C. The program administrator shall distribute the monies
14 appropriated for the program based on demand and the most innovative
15 solutions. The program administrator shall award at least twenty-five
16 percent of these grants to support rural and remote proposals, except that
17 if an insufficient number of qualified rural and remote proposals is
18 submitted, the program administrator may award fewer than twenty-five
19 percent of these grants to rural and remote proposals. The program
20 administrator may retain not more than five percent of monies appropriated
21 each fiscal year to administer the grant program pursuant to this section.
22 Administrative expenditures may include costs of designing a public
23 awareness effort to communicate to the public the ability to choose any
24 public school in this state and how to learn about school choice options
25 in this state and instructing the public how to request enrollment for
26 pupils.

27 D. This section is repealed from and after December 31, 2024.

28 Sec. 112. School facilities oversight board; new school
29 construction rates; applicability

30 Section 41-5741, subsection D, paragraph 3, subdivision (c), Arizona
31 Revised Statutes, as transferred, renumbered and amended by this act,
32 applies to new school facilities that were previously approved by the
33 school facilities board as follows:

<u>School District</u>	<u>Project Number</u>
Douglas Unified	020227000-9999-001N
Liberty Elementary	070425000-9999-005N
Maricopa Unified	110220000-9999-022N
Queen Creek Unified	070295000-9999-018N
Safford Unified	050201000-9999-001N
Santa Cruz Valley	120235000-9999-008N
Sahuarita Unified	100230000-9999-014N
Somerton Elementary	140411000-9999-008N
Somerton Elementary	140411000-9999-009N
Tanque Verde Unified	100213000-9999-002N
Tanque Verde Unified	100213000-9999-003N

1 Vail Unified 100220000-9999-019N
2 Vail Unified 100220000-9999-020N
3 Vail Unified 100220000-9999-021N

4 Sec. 113. Statutory or regulatory requirements; enforcement;
5 2020-2021 school year

6 Notwithstanding any other law, this state shall enforce only those
7 statutory or regulatory requirements for the 2020-2021 school year that
8 are consistent with the approved waiver of the accountability, school
9 identification and related reporting requirements awarded by the United
10 States department of education for this state, including minimum testing
11 percentages and local school ratings.

12 Sec. 114. Career technical education; funding following
13 student graduation; fiscal years 2021-2022
14 through 2024-2025

15 Notwithstanding section 15-393, subsection Y, Arizona Revised
16 Statutes, as added by this act, for fiscal years 2021-2022, 2022-2023,
17 2023-2024 and 2024-2025, a student participating in an approved career
18 technical education program included on the in-demand regional education
19 list compiled pursuant to section 15-393, subsection X, Arizona Revised
20 Statutes, as added by this act, on the date the list is compiled qualifies
21 for funding in the year immediately following graduation.

22 Sec. 115. Terms of school facilities board members

23 Notwithstanding section 41-5701.02, Arizona Revised Statutes, as
24 transferred, renumbered and amended by this act, a person who is serving
25 as a member of the school facilities board on the effective date of this
26 act is eligible to continue to serve as a member of the school facilities
27 oversight board until expiration of the current term of office.

28 Sec. 116. Succession

29 A. As provided by this act, the school facilities oversight board
30 within the school facilities division within the department of
31 administration and the school facilities division within the department of
32 administration succeed to the authority, powers, duties and
33 responsibilities of the school facilities board as provided in this act.

34 B. This act does not alter the effect of any actions that were
35 taken or impair the valid obligations of the school facilities board in
36 existence before the effective date of this act.

37 C. Administrative rules and orders that were adopted by the school
38 facilities board continue in effect until superseded by administrative
39 action by the school facilities oversight board or the school facilities
40 division within the department of administration as provided in this act.

41 D. All administrative matters, contracts and judicial and
42 quasi-judicial actions, whether completed, pending or in process, of the
43 school facilities board on the effective date of this act are transferred
44 to and retain the same status with the school facilities oversight board

Senate Engrossed

general appropriations act; 2021-2022

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 408

SENATE BILL 1823

AN ACT

AMENDING LAWS 2020, CHAPTER 56, SECTION 8; APPROPRIATING MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1	Sec. 34. STATE BOARD OF EQUALIZATION		
2			<u>2021-22</u>
3	FTE positions		7.0
4	Lump sum appropriation	\$	673,200
5	Fund sources:		
6	State general fund	\$	673,200
7	Sec. 35. BOARD OF EXECUTIVE CLEMENCY		
8			<u>2021-22</u>
9	FTE positions		14.5
10	Lump sum appropriation	\$	\$1,184,500
11	Fund sources:		
12	State general fund	\$	1,184,500
13	On or before November 1, 2021, the board of executive clemency shall		
14	report to the directors of the joint legislative budget committee and the		
15	governor's office of strategic planning and budgeting the total number and		
16	types of cases the board reviewed in fiscal year 2020-2021.		
17	Sec. 36. ARIZONA EXPOSITION AND STATE FAIR BOARD		
18			<u>2021-22</u>
19	FTE positions		184.0
20	Lump sum appropriation	\$	13,523,700
21	Fund sources:		
22	Arizona exposition and state		
23	fair fund	\$	13,523,700
24	Sec. 37. ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT		
25			<u>2021-22</u>
26	FTE positions		213.0
27	Operating lump sum appropriation	\$	3,205,800
28	Environmental county grants		250,000
29	Inmate firefighting crews		727,500
30	Postrelease firefighting crews		1,063,400
31	Fire suppression		200,000
32	Rural fire district reimbursement		2,500,000
33	State fire marshal		1,120,600
34	State fire school		275,300
35	Hazardous vegetation removal		<u>3,000,000</u>
36	Total appropriation – Arizona department		
37	of forestry and fire management		\$12,342,600
38	Fund sources:		
39	State general fund		\$12,342,600

40 The appropriation for the rural fire district reimbursement line
 41 item is exempt from the provisions of section 35-190, Arizona Revised
 42 Statutes, relating to lapsing of appropriations.

43 The appropriation for the hazardous vegetation removal line item is
 44 exempt from the provisions of section 35-190, Arizona Revised Statutes,
 45 relating to lapsing of appropriations, until June 30, 2023.

environment; budget reconciliation; 2021-2022

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 407
SENATE BILL 1822

AN ACT

AMENDING SECTION 37-110, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-1310; AMENDING TITLE 41, CHAPTER 3, ARTICLE 1.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-511.24; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3031.01; AMENDING TITLE 49, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING SECTION 49-1273, ARIZONA REVISED STATUTES; AMENDING LAWS 2019, CHAPTER 263, SECTION 141; APPROPRIATING MONIES; RELATING TO ENVIRONMENT BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 37-110, Arizona Revised Statutes, is amended to
3 read:

4 37-110. Due diligence fund; exemption; reversion

5 A. The due diligence fund is established. The commissioner may use
6 monies in the fund to pay the department's costs of evaluating and
7 processing applications and otherwise preparing lands for sales, leases,
8 rights-of-way or other use permits.

9 B. The fund consists of legislative appropriations and
10 reimbursements to the department by winning bidders for the department's
11 costs of advance due diligence investigations and analyses pursuant to
12 subsection A of this section. Monies in the fund are subject to
13 legislative appropriation.

14 C. The commissioner shall administer the fund. Monies in the fund
15 are exempt from the provisions of section 35-190 relating to the lapsing
16 of appropriations, except that all monies in the fund exceeding ~~five~~
17 ~~hundred thousand dollars~~ \$5,000,000 at any time revert to the state
18 general fund.

19 Sec. 2. Title 37, chapter 9, article 1, Arizona Revised Statutes,
20 is amended by adding section 37-1310, to read:

21 37-1310. Emergency medical services on federal lands;
22 payment; requirements; definition

23 A. SUBJECT TO LEGISLATIVE APPROPRIATION, THE STATE FORESTER SHALL
24 PROCESS AND PAY CLAIMS TO A FIRE DISTRICT WITH A POPULATION OF LESS THAN
25 FIVE THOUSAND INHABITANTS FOR EXPENSES INCURRED IN RESPONDING TO EMERGENCY
26 MEDICAL SERVICES CALLS ON FEDERAL LANDS AS FOLLOWS:

27 1. THE FIRE DISTRICT SHALL SUBMIT AN ITEMIZED CLAIM FOR PAYMENT
28 WITHIN NINETY DAYS AFTER THE EMERGENCY MEDICAL SERVICES RESPONSE.

29 2. WITHIN THIRTY DAYS AFTER RECEIVING A COMPLETE AND CORRECT CLAIM
30 FOR PAYMENT, THE STATE FORESTER SHALL COMPLETE THE PROCESSING OF THE CLAIM
31 AND PAY THE FIRE DISTRICT.

32 B. FOR THE PURPOSES OF THIS SECTION, "EXPENSES":

33 1. INCLUDES PERSONNEL COSTS FOR PERSONNEL THAT DIRECTLY RESPOND TO
34 AN EMERGENCY MEDICAL SERVICES CALL, FUEL COSTS, COSTS FOR MEDICAL SUPPLIES
35 AND OTHER COSTS THE STATE FORESTER DETERMINES ARE RELATED TO THE RESPONSE.

36 2. DOES NOT INCLUDE EMERGENCY MEDICAL SERVICES REGULATED PURSUANT
37 TO TITLE 36, CHAPTER 21.1.

38 Sec. 3. Title 41, chapter 3, article 1.1, Arizona Revised Statutes,
39 is amended by adding section 41-511.24, to read:

40 41-511.24. Arizona state parks store fund

41 A. THE ARIZONA STATE PARKS STORE FUND IS ESTABLISHED CONSISTING OF
42 MONIES DEPOSITED PURSUANT TO A FEE SCHEDULE FOR GOODS AND SERVICES
43 DETERMINED BY THE ARIZONA STATE PARKS BOARD. THE BOARD SHALL ADMINISTER
44 THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND
45 SHALL BE USED BY THE BOARD TO OPERATE AND MAINTAIN GIFT SHOPS.

EXHIBIT 2

The Arizona State Constitution

Second Edition

John D. Leshy

Foreword by Chief Justice Rebecca White Berch

THE OXFORD COMMENTARIES ON THE STATE
CONSTITUTIONS OF THE UNITED STATES
G. Alan Tarr, Series Editor

OXFORD
UNIVERSITY PRESS

Section 11

Each house may punish its members for disorderly behavior, and may, with the concurrence of two-thirds of its members, expel any member.

This self-explanatory provision closely resembles part of Article I, section 5, clause 3 of the U.S. Constitution. It has never been addressed by the courts, and thus it remains untested whether the courts may review legislative punishment, or what constitutes "disorderly behavior."⁶⁸

Section 12

Procedure on bills; approval or disapproval by governor. Every bill shall be read by sections on three different days, unless in case of emergency, two-thirds of either house deem it expedient to dispense with this rule. The vote on the final passage of any bill or joint resolution shall be taken by ayes and nays on roll call. Every measure when finally passed shall be presented to the governor for his approval or disapproval.

Originally this section required a full reading of every bill by sections "on its final passage." As bills became longer and more complex, and as legislators became busier (or their attention spans became shorter), the section was amended (and the caption added) in 1972 to delete the requirement for at least one full reading. The Supreme Court has held that the final sentence of this section prevents the legislature, once bills pass both houses, from taking more time in sending them to the governor than "is reasonably necessary to complete any ministerial tasks and otherwise effect their orderly transmittal"; that is, the legislature cannot hold bills to gain political leverage or bargaining advantage (*Brewer v. Burns*).

Section 13

Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

This provision is found, in one form or another, in the constitutions of nearly three-fourths of the states, but has no counterpart in the U.S. Constitution.⁶⁹ It is closely related to the prohibition against legislation by reference (section 14 of this part), to the "single-subject" limitation on appropriations legislation

⁶⁸ A state senator involved in a bribery scandal was removed in 1991, but did not contest the matter in court. See McClory, *supra* note 2, at 77.

⁶⁹ See generally M. Ruud, No Law Shall Embrace More than One Subject, 42 Minn. L. Rev. 389 (1958); Robert Williams, State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement, 48 U. Pitt. L. Rev. 796 (1987).

other than the general appropriations bill (section 20 of this part), and to the last sentence of Article XXI, section 1, which has been interpreted to contain a "separate amendment" requirement for constitutional amendments that resembles but is not identical to the single-subject principle (see the commentary under that section). In an early decision, the Supreme Court explained that this section was a response to the "legislative practice of including in the same bill wholly unrelated provisions, of enacting laws under false and misleading title, and of incorporating in meritorious bills provisions not deserving of general favor and which, standing alone, could not command the necessary support to pass them" (*In re Miller*; see also *Board of Control v. Buckstegge*). The single-subject principle is not, however, applicable to initiated statutes; see the commentary at the end of Article IV, part 1, *supra*.

This section has given rise to a large volume of litigation. The result in any particular case turns on its own facts, so that generalization from the mass of reported decisions is hazardous, if not downright impossible. The Supreme Court has characterized the judicial role in applying the single-subject principle as to follow "its spirit without being so narrowly technical on the one side as to substitute the letter for the spirit, or so foolishly liberal on the other as to render the constitutional provision nugatory" (*Taylor v. Frohmiller*). Many cases have described the test for singleness of subject in liberal terms; for example, an Arizona court of appeals (*Litchfield Elementary School District No. 79 v. Babbitt*) has said (quoting from a Minnesota decision) that "subject" should

be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other.

The Supreme Court has also said that the related provision for constitutional amendments (Article XXI, section 1) establishes a "stricter test," in part because it does not include the "and matters properly connected therewith" language of this section (*Clean Elections Institute v. Brewer*). Legislation does not violate the one-subject principle just because it contains both civil and criminal provisions, if they are "reasonably related" (*Sample v. Sample*).

Once a violation of the single-subject rule has been found, the entire act is void because it is "infected by reason of the combination of its various elements rather than by any invalidity of one component" (*Litchfield Elementary School District No. 79 v. Babbitt*; see also the commentary under section 20 of this part).

The adequate title requirement is independent of the one-subject principle; that is, a title may refer to as many subjects as necessary to convey the meaning of the act (*Sample v. Sample*). The Supreme Court does not demand that the title depict the legislation "minutely and in great detail," but it must not be "so

meager as to mislead or tend to avert inquiry into the contents thereof" (*Board of Control v. Buckstegge*; see also *State v. Davey*). The scope of the title is controlled in substantial part by the nature of the legislation itself (*Taylor v. Frohmiller*). A title that is broader than the body of the act generally poses no constitutional problem, because the "mischief" sought to be avoided was a title "too narrow and not too broad" (*Maricopa County Municipal Water Conservation District No. 1 v. La Prade*).

The last clause of this section clearly signals that portions of bills not fairly described in the title should, where possible, be severed from those parts that are adequately described, and the Arizona courts have applied this severability notion (e.g., *State v. Pelosi*).

Section 14

No act or section thereof shall be revised or amended by mere reference to the title of such act, but the act or section as amended shall be set forth and published at full length.

Like the previous section, this one aims at combating legislative ignorance or inadvertence in enacting new laws, to "prevent amendments by merely striking out or adding sentences in a contextual vacuum" (*State v. Fridley*). (The last clause of Article IX, section 9 contains a similar prohibition, aimed specifically at taxation legislation.) Although the objective is salutary, the instrument chosen to achieve it is blunt and potentially inefficient and difficult to enforce. As laws become more complex and the web of statutes more intricate, new laws may incidentally or implicitly alter or modify existing statutes more frequently.

In general, the courts have been quite hostile to claims that this section has been violated. The Supreme Court has held, for example, that if the new act is "complete, comprehensive and independent," the fact that "some of its provisions have inevitably and naturally amended, modified, or altered" existing laws does not require incorporation of those other laws (*State Tax Commission v. Shattuck*). The Court has taken the same approach to new laws that incidentally repeal, rather than simply amend, existing laws (*Mosher v. City of Phoenix*, 1932). The controlling idea is that the new law be "complete in itself [with] no tendency to mislead or deceive" (*State v. Pelosi*).

In the only reported decision applying this section in the last thirty years, a court of appeals, noting that one purpose of this section is to "apprise those who are affected by an existing law of any important changes" (quoting a Washington court decision applying a similar provision in the Washington State Constitution), has applied this section to strike down a law that required permit applicants to pay a fee that had previously been applied only to permit holders, by simply providing the legal citation of the earlier statute (*City of Sierra Vista v. Director, Arizona Department of Environmental Quality*).

EXHIBIT 3

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7

8

ARIZONA SUPERIOR COURT

9

COUNTY OF MARICOPA

10

GEORGE K. STAROPOLI and
11 WILLIAM M. BROWN,

12

Plaintiffs,

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v.

14

STATE OF ARIZONA,

15

Defendant.

Case No: CV2013-009991

STIPULATION

(Assigned to the Honorable Randall Warner)

16

17

I

18

INTRODUCTION

19

20

In the interest of a prompt and speedy resolution of the above-captioned matter,
consistent with the public interest, statutory requirements, and the responsibilities of the

21

Arizona Attorney General's Office and the State of Arizona, the Parties enter into this

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Consent Agreement.

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II

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CONSENT AGREEMENT

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In lieu of further proceedings, the Parties enter into this Consent Agreement for
the purposes of settlement.

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III

FINDINGS OF FACT

The parties stipulate that the following findings of fact are true and correct and can be relied upon by the Court in the issuance of its order.

1. In January 2013, the Fifty-first Legislature for the State of Arizona was sworn in and convened for its first regular session.
2. On February 18, 2013, HB 2371, a bill titled “AN ACT AMENDING SECTION 34-243, ARIZONA REVISED STATUTES; RELATING TO ELIGIBILITY AND PREFERENCE OF CONTRACTORS AND SUBCONTRACTORS” and sponsored by Arizona State Representative Michelle Ugenti (“Rep. Ugenti”) had its first reading in the Arizona House of Representatives.
3. The Government Committee, chaired by Rep. Ugenti, received HB 2371 on February 19, 2013, and amended the bill with a strike everything amendment that proposed making several changes to the homeowner association (“HOA”) statutes.
4. The Committee adopted the strike everything amendment and passed the amended bill.

5. The title of the amended bill was:

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA
REVISED STATUTES, BY ADDING SECTION 9-461.15;
AMENDING TITLE 11, CHAPTER 6, ARTICLE 1, ARIZONA
REVISED STATUTES, BY ADDING SECTION 11-810;
AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA
REVISED STATUTES, BY ADDING SECTION 33-1242.01;

1 AMENDING SECTION 33-1250, ARIZONA REVISED
2 STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3,
3 ARIZONA REVISED STATUTES, BY ADDING SECTION 33-
4 1260.01; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1,
5 ARIZONA REVISED STATUTES, BY ADDING SECTION 33-
6 1806.01; AMENDING SECTION 33-1812, ARIZONA REVISED
7 STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE
8 1, ARIZONA REVISED STATUTES, BY ADDING SECTION
9 33-1818; AMENDING SECTION 41-2198.01, ARIZONA
10 REVISED STATUTES; RELATING TO CONDOMINIUMS.
11 AND PLANNED COMMUNITIES.

- 12 6. On March 7, 2013, HB 2371 passed the Arizona House of Representatives and,
13 on March 8, 2013, was transmitted to the Senate.
- 14 7. HB 2371 was not passed by the Senate. Thus, it did not become law.
- 15 8. On February 5, 2013, SB 1454, a bill entitled "AN ACT AMENDING
16 SECTIONS 16-901, 16-912, 16-948 AND 16-1019, ARIZONA REVISED
17 STATUTES; RELATING TO ELECTIONS" and sponsored by Arizona State
18 Senators Yee, Barto, Meza and Reagan had its first reading in the Arizona Senate.
- 19 9. The purpose of the Senate Version of SB 1454 was modification of the "in-kind
20 contribution" definition in relation to campaign contributions and expenses. (See
21 Amended Senate Fact Sheet dated March 5, 2013, available at
22 http://www.azleg.gov/legtext/51leg/1r/summary/s.1454elec_aspassed.pdf)
- 23 10. SB 1454 was first read in the Arizona House of Representatives on March 7,
24 2013.
- 25 11. On June 13, 2013, SB 1454 reached the Committee of the Whole where several
26 floor amendments were offered and passed.
- 27 12. Rep. Ugenti offered two floor amendments: a sixty-five page amendment to the
28 Senate engrossed bill and a second amendment to the sixty-five page amendment
("Ugenti Floor Amendments"). When SB 1454 returned to the Senate, in addition
to the bill's primary purpose as an omnibus elections bill a new secondary subject

1 was added "[m]ak[ing] omnibus changes related to planned communities and
2 home owners associations (HOAs)." Memorandum dated June 14, 2013 to
3 Senator Kimberly Yee from Cherie Stone, Legislative Research Analyst
4 (available at
5 http://www.azleg.gov/legtext/5lleg/lr/summary!s.1454elec_housechanges.pdf).

6 13. The title to House Engrossed Senate Bill SB 1454 was:

7 AN ACT

8 AMENDING SECTION 9-231, ARIZONA REVISED STATUTES;
9 AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA
10 REVISED STATUTES, BY ADDING SECTION 9-461.15;
11 AMENDING TITLE 11, CHAPTER 6, ARTICLE 1, ARIZONA
12 REVISED STATUTES, BY ADDING SECTION 11-810;
13 AMENDING SECTION 16-411, ARIZONA REVISED
14 STATUTES; AMENDING TITLE 16, CHAPTER 4, ARIZONA
15 REVISED STATUTES, BY ADDING ARTICLE 8.2; AMENDING
16 SECTIONS 16-901, 16-905, 16-912, 16-912.01, 16-920, 16-921, 16-
17 948, 16-950, 16-1019, 22-512 AND 33-1250, ARIZONA REVISED
18 STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3,
19 ARIZONA REVISED STATUTES, BY ADDING SECTION 33-
20 1260.01; AMENDING SECTION 33-1261, ARIZONA REVISED
STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1,
ARIZONA REVISED STATUTES, BY ADDING SECTION 33- ..
1806.01; AMENDING SECTIONS 33-1812 AND 41-2198.01,
ARIZONA REVISED STATUTES; PROVIDING FOR THE
DELAYED REPEAL OF SECTION 16-559, ARIZONA REVISED
STATUTES, AS ADDED BY THIS ACT; RELATING TO
ELECTIONS

21 14. The Senate passed House Engrossed Senate Bill SB 1454 without any changes to
22 the bill on June 14, 2013 and it was transmitted to the Governor on June 17, 2013.

23 15. The Governor signed House Engrossed Senate Bill SB 1454 on June 20, 2013.

24 16. Section 24 of SB 1454 contains a severability clause making it clear that the
25 Legislature intends that in the event that any provision of the act is held invalid
26 the remaining provisions of the act remain in effect.

1 17. The legislature adjourned sine die on June 14, 2013, and SB 1454 will become
2 effective on September 13, 2013.

3 18. The Plaintiffs filed this action challenging SB 1454 on July 16, 2013. The
4 Complaint alleges that SB 1454 violates Article 4, Pt. 2 § 13 of the Arizona
5 Constitution. Pursuant to A.R.S. § 12-1841, the President of the Arizona Senate
6 and the Speaker of the Arizona House of Representatives were served with a copy
7 of the Complaint and the required Notice of Unconstitutionality. The President
8 and Speaker have been provided with a copy of this Stipulation.

9 **IV**

10 **CONCLUSIONS OF LAW**

11 19. The parties stipulate that the following Conclusions of Law are correct and can be
12 relied upon by the Court in the issuance of its order.

13 20. Article 4, pt. 2 § 13 of the Arizona Constitution provides that:

14 Every Act shall embrace but one subject and matters properly connected
15 therewith, which subject shall be expressed in the title; but if any subject
16 shall be embraced in an Act which shall not be expressed in the title, such
17 Act shall be void only as to so much thereof as shall not be embraced in the
18 title.

19 21. The parties agree that SB 1454 based upon the foregoing Findings of Fact
20 violates Article 4, pt. 2 § 13 of the Arizona Constitution.

21 ~~22. The Defendant State of Arizona through the Arizona Attorney General agrees that~~
22 it has the authority to enter into this Stipulation and bind the state's officers,
23 agents, servants, employees, and attorneys to its terms.

24 23. The parties agree to the issuance of an order by the Court in the form attached to
25 this Stipulation.

26 24. Defendant agrees to pay Plaintiffs attorneys fees in the amount of \$7,500.00.

27 DATED this 6th day of September, 2013.

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ARIZONA CENTER FOR LAW IN
THE PUBLIC INTEREST

/s/ Timothy M. Hogan
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OFFICE OF THE ARIZONA ATTORNEY
GENERAL

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Section Chief Counsel
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Attorney for Defendants

I hereby certify that the foregoing document
was filed through AZTurboCourt
this 6th day of September 2013, and

Copy of the foregoing mailed
this 6th day of September, 2013 to:

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/s/ Barbara Lindsay
Secretary to Jeffrey A. Zick

#3524251

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ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

GEORGE K. STAROPOLI and
WILLIAM M. BROWN,

Plaintiffs,

v.

STATE OF ARIZONA,

Defendant.

Case No: CV2013-009991

ORDER

(Assigned to the Honorable Randall Warner)

Pursuant to the Stipulation of the parties, the Court finds and concludes as follows:

The Court accepts the Findings of Fact and Conclusions of Law stipulated by the parties and incorporates them into this Order: SB 1454 was enacted by the Fifty-First Legislature and when introduced contained provisions relating to Arizona elections. Amendments were approved to SB 1454 that included provisions relating to planned developments and homeowners associations. SB 1454 in its amended form with provisions related to elections and to planned developments/homeowners associations was approved on June 14, 2013 and transmitted to the Governor on June 17, 2013. The Governor signed House Engrossed Senate Bill 1454 on June 20, 2013.

Plaintiffs have alleged in their Complaint that SB 1454 violates Article 4, Pt. 2, § 13 of the Arizona Constitution which provides that:

Every act shall embrace but one subject and matters properly connected therewith, which subjects shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

The parties stipulate that SB 1454 violates this constitutional provision and that the portions of SB 1454 that relate to planned communities/homeowners associations

1 should be declared void and unenforceable. Those provisions are: Sections 2, 3, 15, 16,
2 17, 19, 20 and 21.

3 Based on the foregoing, the Court determines that the provisions of SB 1454
4 enumerated above that relate to planned communities/homeowner associations violate
5 Article 4, pt. 2, § 13 of the Arizona Constitution and are void and unenforceable. The
6 remaining portions of SB 1454 shall become effective on September 13, 2013 as
7 prescribed by the law.

8 It is further ordered that the Defendant shall pay the Plaintiff's attorneys' fees in
9 the amount of \$7,500 and that each party shall bear its own costs.

10 DATED this ____ day of September, 2013.

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Maricopa County Superior Court Judge

eSignature Page 1 of 1

Filing ID: 5439123 Case Number: CV2013-009991
Original Filing ID: 5434049

Granted as Submitted



ENDORSEMENT PAGE

CASE NUMBER: CV2013-009991

SIGNATURE DATE: 9/10/2013

E-FILING ID #: 5439123

FILED DATE: 9/11/2013 8:00:00 AM

JEFFREY A. ZICK

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12 **ARIZONA SUPERIOR COURT**
13 **MARICOPA COUNTY**

14 ARIZONA SCHOOL BOARDS) No. CV2021-012741
15 ASSOCIATION, INC., an Arizona nonprofit)
corporation, et al.,) **NOTICE OF SUPPLEMENTAL**
16) **AUTHORITY**
Plaintiffs,)
17 v.)
18 STATE OF ARIZONA, a body politic,) (Assign to the Hon. Katherine Cooper)
19 Defendant.)
20)

21 Plaintiffs hereby give notice of supplemental authority published by the Centers for
22 Disease Control and Prevention (“CDC”) on September 24, 2021, which supplements Plaintiffs’
23 Motion for Preliminary Injunction at 16-18, 20-24, and Reply in Support of Motion for
24 Preliminary Injunction at 5-6, 9.

25 This supplemental authority from the CDC states: “In the two largest Arizona counties,
26 with variable K–12 school masking policies at the onset of the 2021–22 academic year, the odds

1 of a school-associated COVID-19 outbreak were 3.5 times higher in schools with no mask
2 requirement than in those with a mask requirement implemented at the time school started.
3 Lapses in universal masking contribute to COVID-19 outbreaks in school settings.” [CDC
4 Report, *Association Between K–12 School Mask Policies and School-Associated COVID-19*
5 *Outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021*, [https://www.cdc.gov/
6 mmwr/volumes/70/wr/mm7039e1.htm?s_cid=mm7039e1_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7039e1.htm?s_cid=mm7039e1_w), a true and accurate copy attached
7 as **Exhibit A**]

8 The CDC continues to “recommend[] universal indoor masking in K–12 schools.” [*Id.*]

9 DATED this 27th day of September, 2021.

10 **COPPERSMITH BROCKELMAN PLC**

11 By /s/ Roopali H. Desai

12 Roopali H. Desai
13 D. Andrew Gaona
14 Kristen Yost

15 **ARIZONA CENTER FOR LAW IN THE
16 PUBLIC INTEREST**

17 Daniel J. Adelman
18 *Attorneys for Plaintiffs*

19 ORIGINAL served via electronic means
20 this 27th day of September, 2021, upon:

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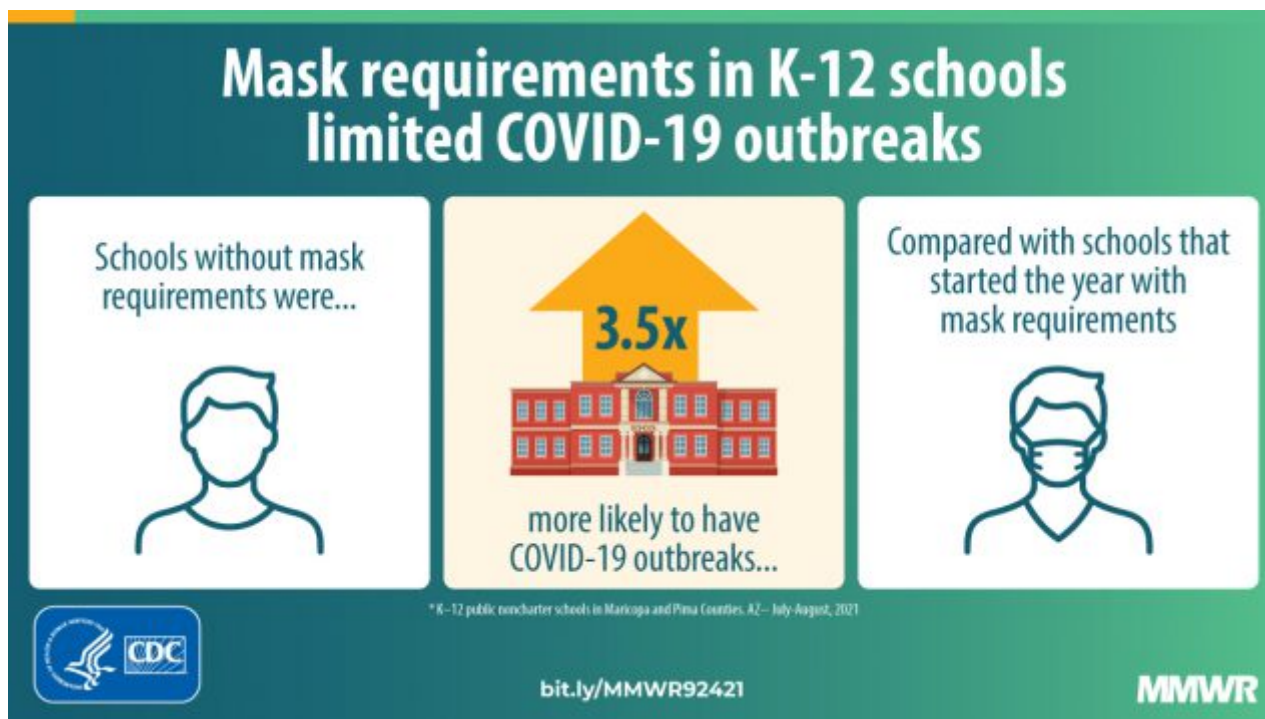
33 /s/ Diana J. Hanson

EXHIBIT A

Early Release / September 24, 2021 / 70

Megan Jehn, PhD^{1,*}; J. Mac McCullough, PhD^{2,*}; Ariella P. Dale, PhD^{3,4}; Matthew Gue¹; Brian Eller⁵; Theresa Cullen, MD⁵; Sarah E. Scott, MD⁴ ([View author affiliations](#))

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- Reddit (3)

Citations:

Views: *Views equals page views plus PDF downloads*

[Metric Details](#)

CDC recommends universal indoor masking by students, staff members, faculty, and visitors in kindergarten through grade 12 (K-12) schools, regardless of vaccination status, to reduce transmission of SARS-CoV-2, the virus that causes COVID-19 (1). Schools in Maricopa and Pima Counties, which account for >75% of Arizona’s population (2), resumed in-person learning for the 2021–22 academic year during late July through early August 2021. In mid-July, county-wide 7-day case rates were 161 and 105 per 100,000 persons in Maricopa and Pima Counties, respectively, and 47.6% of Maricopa County residents and 59.2% of Pima County residents had received at least 1 dose of a COVID-19 vaccine. School districts in both counties implemented variable mask policies at the start of the 2021–22 academic year (Table). The association between school mask policies and school-associated COVID-19 outbreaks in K-12 public noncharter schools open for in-person learning in Maricopa and Pima Counties during July 15–August 31, 2021, was evaluated.

[Table](#)

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Related Materials

[PDF](#) [191K]

A school was considered to have a mask requirement if all persons, regardless of vaccination status, were required to wear a mask indoors in school. An early mask requirement was one that was in place when the school year began, and a late mask requirement was one that was implemented any time after school began. Mask policies were abstracted from publicly available school COVID-19 mitigation plans, which must be posted online per Executive Order 2020–51.[†] A school-associated outbreak was defined as the occurrence of two or more laboratory-confirmed COVID-19 cases[§] among students or staff members at the school within a 14-day period and at least 7 calendar days after school started, and that was otherwise consistent with the Council for State and Territorial Epidemiologists 2020 outbreak definition[¶] and Arizona’s school-associated outbreak definition.^{**} In Arizona, school-associated outbreaks are required to be reported to the local public health agency within 24 hours; data are stored in Arizona’s Medical Electronic Disease Surveillance Intelligence System. School characteristics, including county of location, grade levels present,^{††} enrollment, and Title I status^{§§} (a measure of a school population’s socioeconomic status) were obtained from the Arizona Department of Education. Crude and adjusted logistic regression analyses with 95% confidence intervals (CIs) were performed in Stata (version 15; StataCorp) and adjusted for school county, enrollment size, grade levels present, Title I status, and 7-day COVID-19 case rate in the school’s zip code during the week school commenced. Schools with late mask requirements were excluded from these analyses because of their mixed exposure status during the sampling time frame (e.g., schools might have enacted mask requirements after an outbreak). Vaccination coverage for staff members and students was not available at the school level.

Data were available for 1,020 of 1,041 (98.0%) K–12 public noncharter schools in Maricopa and Pima counties. Twenty-one (2.0%) schools had outbreaks reported <7 days after school began and were excluded from the analyses. Among the 999 (96.0%) schools included in the analysis, 210 (21.0%) had an early mask requirement, 309 (30.9%) had a late mask requirement enacted a median of 15 days after school started (interquartile range = 9–17 days), and 480 (48.0%) had no mask requirement (Table). During July 15–August 31, 2021, 191 school-associated outbreaks occurred, 16 (8.4%) in schools with early mask requirements, 62 (32.5%) in schools with late mask requirements, and 113 (59.2%) in schools without a mask requirement.

In the crude analysis, the odds of a school-associated COVID-19 outbreak in schools with no mask requirement were 3.7 times higher than those in schools with an early mask requirement (odds ratio [OR] = 3.7; 95% CI = 2.2–6.5). After adjusting for potential described confounders, the odds of a school-associated COVID-19 outbreak in schools without a mask requirement were 3.5 times higher than those in schools with an early mask requirement (OR = 3.5; 95% CI = 1.8–6.9).

CDC recommends universal indoor masking in K–12 schools (1); however, masking requirements in K–12 schools vary by school district, county, and state. In the two largest Arizona counties, with variable K–12 school masking policies at the onset of the 2021–22 academic year, the odds of a school-associated COVID-19 outbreak were 3.5 times higher in schools with no mask requirement than in those with a mask requirement implemented at the time school started. Lapses in universal masking contribute to COVID-19 outbreaks in school settings (3); CDC K–12 school guidance recommends multiple prevention strategies. Given the high transmissibility of the SARS-CoV-2 B.1.617.2 (Delta) variant, universal masking, in addition to vaccination of all eligible students, staff members, and faculty and implementation of other prevention measures, remains essential to COVID-19 prevention in K–12 settings (1).

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* These authors contributed equally to this report.

† https://azgovernor.gov/sites/default/files/executive_order_2020-51.pdf  

§ Defined as a SARS-CoV-2–positive reverse transcription–polymerase chain reaction or nucleic acid amplification test or antigen test.

¶ <https://preparedness.cste.org/wp-content/uploads/2020/08/Educational-Outbreak-Definition.pdf>  




** Emergency Measure 2020–03. <https://www.azdhs.gov/covid19/documents/emergency-measure-2020-03.pdf>  

†† The variable for grade levels present was included within the model as three separate indicator variables, corresponding to elementary, middle, and high school.

§§ <https://www2.ed.gov/programs/titleiparta/index.html> 

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TABLE. School-associated COVID-19 outbreaks and school characteristics among K–12 public noncharter schools, by school mask policy — Maricopa and Pima Counties, Arizona, July–August 2021

Characteristic	All schools no. (%) (N = 999)	School mask requirements no. of schools (%)			p-value*
		None*	Early*	Late*	
		(n = 480)	(n = 210)	(n = 309)	
School-associated outbreak[†]					<0.001
No	808 (81)	367 (76)	194 (92)	247 (80)	
Yes	191 (19)	113 (24)	16 (8)	62 (20)	
County					<0.001
Maricopa	782 (78)	444 (93)	100 (48)	238 (77)	
Pima	217 (22)	36 (8)	110 (52)	71 (23)	
Grades present[§]					NC [§]
Elementary (K–5)	678 (68)	296 (62)	136 (65)	246 (80)	
Middle (6–8)	656 (66)	336 (70)	110 (52)	210 (68)	
High (9–12)	251 (25)	160 (33)	58 (28)	33 (11)	
7-day case rate in school zip code[¶]					0.002
<10	3 (0.3)	3 (0.6)	0 (—)	0 (—)	
10 to <50	4 (0.4)	4 (0.8)	0 (—)	0 (—)	
50 to <100	36 (4)	14 (3)	19 (9)	3 (1)	
>100	956 (96)	459 (96)	191 (91)	306 (99)	
Title I status^{**}					<0.001
Not Title I	359 (36)	216 (45)	45 (21)	98 (32)	
Title I eligible	81 (8)	48 (10)	5 (2)	28 (9)	

Characteristic	All schools no. (%)	School mask requirements no. of schools (%)			p-value*
		None*	Early*	Late*	
	(N = 999)	(n = 480)	(n = 210)	(n = 309)	
Any Title I participation	559 (56)	216 (45)	160 (76)	183 (59)	
No. of students enrolled					<0.001
<850	243 (24)	60 (13)	109 (52)	74 (24)	
850–1,199	248 (25)	108 (23)	32 (15)	108 (35)	
1,200–1,649	255 (26)	156 (33)	32 (15)	67 (22)	
≥1,650	253 (25)	156 (33)	37 (18)	60 (19)	

Abbreviations: K–12 = kindergarten through grade 12; NC = not calculated.

* Chi-square and Fisher’s exact tests were used to calculate p-values between schools with early mask requirements (mask requirement in place at the start of the school year) and those with no mask requirements, which are included in logistic regression analyses. Schools with late mask requirements instituted mask requirements at any time after the start of the school year.

† During July 15–August 31, 2021.

§ Defined as the presence or absence of grades taught at the school. Categories are not mutually exclusive, and p-value was not calculated. Three separate indicator variables were used to capture presence of these grade levels in the multivariate model.

¶ Calculated as all new confirmed and probable COVID-19 cases per 100,000 population occurring in each zip code containing a school included in this analysis during the surveillance week in which the school’s academic year started. Categories presented are based on CDC community transmission metrics, included as a continuous variable in the multivariate model.

** Under Title I, financial assistance is provided to local educational agencies and schools with high numbers or high percentages of students from low-income families.

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HONORABLE KATHERINE COOPER

CLERK OF THE COURT
P. McKinley
Deputy

ARIZONA SCHOOL BOARDS ASSOCIATION
INC., ET AL

ROOPALI HARDIN DESAI

v.

STATE OF ARIZONA, ET AL.

PATRICK IRVINE
JOHN C RICHARDSON
CHRISTOPHER A VISKOVIC
DANIEL J ADELMAN
KRISTEN YOST
MICHAEL S CATLETT
THOMAS J. BASILE

COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE COOPER

RULING RE: DECLARATORY JUDGMENT

Pending before the Court is the Complaint for Declaratory and Injunctive Relief filed August 12, 2021 and fully-briefed Motion for Preliminary Injunction filed August 18, 2021. Having considered the pleadings and counsels' oral argument and for the reasons stated the Court finds:

- Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; Section 2 of SB1825; and SB1819 violate the title and/or subject matter requirements of the Arizona Constitution, Art. IV, pt. 2, §13 (hereinafter "Section 13"), and are therefore void and unenforceable.

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- Given the declaration that these provisions are unconstitutional under Section 13, the request for injunctive relief is moot. If non-compliance occurs, further relief is available under A.R.S. §12-1838. Similarly, since HB2898, Section 12 (banning masks in public and charter schools), is unconstitutional under Section 13, the Court need not reach the issue of whether it violates the equal protection clause, Arizona Constitution, Article. II, §13.

OVERVIEW OF CLAIMS AND RELIEF REQUESTED

This litigation concerns the validity of four bills recently enacted by the Legislature – HB2898, SB1824, SB1825, and SB1819. Plaintiffs contend that these bills violate the title and single subject requirements of Section 13. They also claim that HB2898 violates the Arizona Constitution’s equal protection clause, Article II, §13.

The title and single subject requirements safeguard the legislative process. Section 13 requires that “[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title[.]” The title requirement ensures that the public has notice of proposed legislation and a fair opportunity to participate in the process. The single subject rule precludes legislators from combining unrelated provisions into one bill to garner votes for disfavored measures. Together these requirements promote transparency and the public’s access to information about legislative action.

Plaintiffs contend that the Legislature ignored these fundamental rules of legislation in two ways. First, they inserted policy provisions – most of which relate to COVID-19 mitigation measures – into each bill under the title “budget reconciliation.” Second, the Legislature combined approximately 30 subjects into a single bill, SB1819. In short, Plaintiffs argue, the Legislature used budget-related bills to pass substantive legislation that has nothing to do with the budget.

In addition to the title and single subject offenses, Plaintiffs claim that HB2898 fails to comply with the equal protection clause under Art. II, § 13 of the Arizona Constitution by banning public and charter schools – but not private schools – from requiring masks to protect against COVID-19.

Plaintiffs seek 1) a declaratory judgment that SB1819; Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; and Section 2 of SB1825 are unconstitutional; and 2) an order enjoining the State and its agents from implementing and enforcing these provisions.

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BUDGET RECONCILIATION BILLS (BRBs)

It is undisputed that the bills are “budget reconciliation bills,” also known as “BRBs.” A BRB is a bill used to implement the appropriations in the State’s budget. The Arizona Constitution prohibits including substantive legislation in the general appropriations bill. Art. IV, pt. 2 §20. Any changes in substantive law that are necessary to implement budget allocations must be made in separate BRBs.

Reconciliation bills are well-known to legislators as part of the budget process. For each bill here, legislative staff generated a Senate Fact Sheet, a document that summarizes the bill’s contents. The first paragraph of these fact sheets states that the purpose of the bill is to “[make] statutory and session law changes...to implement the FY 2022 state budget.” Each fact sheet goes on to explain:

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes *to effectuate the budget*. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to *enact these provisions*.

Senate Fact Sheets, 55th Leg., 1st Reg. Sess. (Ariz. June 30, 2021, Exhs. 3, 4, 5, and 6 to Motion (emphasis added)). See *State v. Payne*, 223 Ariz. 555, 563, ft. 5 (App. 2009) (“Arizona courts have cited Senate fact sheets as relevant legislative history and as reflective, though not dispositive, of legislative intent.”) See also Arizona Legislative Council’s Arizona Legislative Manual (Compl. Exh. A) (identifying reconciliation bills as bills that “are used for statutory adjustments that must be implemented to carry out the adopted budget.”)¹ Simply put, BRBs are budget-related bills that exist to provide the substantive law necessary to carry out the State’s annual appropriations.

In June 2021, the Legislature passed HB2898, SB1824, SB1825, and SB1819 as part of the 2021-2022 budget process. As BRBs, their function was to enact laws to effectuate the budget. It was not to enact laws prohibiting mask mandates, regulating school curriculum, or authorizing special interest projects unrelated to the budget or budget reconciliation.

¹ The Legislative Manual, published in 2003, refers to “omnibus reconciliation bills” which appear to be known now as “budget reconciliation bills.”

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DEFENSES

Before addressing the validity of the BRBs under Section 13, the Court considers two arguments – standing and political question/justiciability – advanced by the State to resolve the litigation without consideration of the merits.

1. Standing

The State contends that Plaintiffs lack standing to challenge SB1819 because they do not allege facts establishing an injury from SB1819’s alleged violations of Section 13.²

This matter arises under the Arizona Declaratory Judgments Act, A.R.S. §12-1831, et. seq. In §12-1832, the Act provides that “[a]ny person...whose rights, status or other legal relations are affected by a statute, ...may have determined any question of construction or validity arising under the...statute... and obtain a declaration of rights, status or other legal relations thereunder.”

Persons who qualify under §12-1832 “are proper parties to bring a suit... to have a statute declared unconstitutional.” *Pena v. Fullinwider*, 124 Ariz. 42, 44 (1979). “Person” includes “corporation[s] of any character whatsoever.” A.R.S. §12-1843. Organizational plaintiffs may assert: (1) representational standing on behalf of their members, and (2) direct standing in their own right. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004). “[A]n organization has direct standing to sue where...defendant’s behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021).

The Court of Appeals rejected an argument based on standing similar to the State’s defense. In *American Estate Life Ins. Co. v. State Dept. of Ins*, 116 Ariz. 240 243 (App. 1977), several insurance companies argued that a statute that imposed a tax was unconstitutional under Section 13’s title requirement. There, as here, the State argued that the insurance companies had to show prejudice, that is, injury caused by the defective title. Although the court did not characterize the insurance companies’ argument as one of standing, it held that the insurance companies were not required to show “prejudice.” “They are only required to show that the title did not give adequate notice that the content of the act would impose an additional tax obligation on domestic insurers.” *Id.* at 243.

² The State agrees that Plaintiffs have standing to challenge HB2898, SB1824, and SB1825.

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Plaintiffs are parents, teachers, university professors, physicians, and non-profit organizations that promote training, leadership, and governmental action on behalf of school boards, children, and families, and other interests related to preserving a representative democracy. They have alleged that SB1819 has and will directly affect them. They claim loss of resources (both financial and human resources) due to the Legislature's failure to follow proper legislative process in enacting SB1819.³ They also claim that the passage of SB1819 without adequate notice deprived them of the ability to participate in the legislative process.⁴ Finally, Section 39 of SB1819 bans localities from adopting COVID-19 mitigation measures that impact schools, including mask requirements. Plaintiffs expressly allege the benefits of masking to prevent the spread of COVID-19, the increasing rate of infection among children, and the risk that their children (and the children of persons they represent) will contract the virus without a mask. (Compl. ¶¶ 75-80, 99-108)

The State also argues that the Plaintiffs lack standing to challenge SB1819 because they contest only six provisions of SB1819 and have not shown direct harm from any of those provisions. As discussed above, Plaintiffs do not need to show injury to challenge a statute under Section 13's title requirement. They need only "show that the title did not give adequate notice" of the bill's contents. *Id.*

Declaratory relief does not impose a provision-by-provision test to have standing. Plaintiffs have alleged facts establishing that SB1819, as well as the other bills, have directly affected their rights and resources.

2. Political Question/Justiciability

The State further contends that the Court lacks authority to determine whether the bills violate the Arizona Constitution because the Legislature has sole discretion over the budget and the laws necessary to implement that budget. Therefore, the Legislature and only the Legislature may decide whether the provisions it includes in a BRB are necessary or sufficiently related to effectuate the budget. In making this argument, the State relies on the political question doctrine and the emergency referendum exception. Neither applies here.

a. Political question doctrine

Non-justiciable political questions "involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution

³ Compl. ¶¶ 9, 12, 13; Lujan Decl. ¶ 11; Edman Decl. ¶ 6.

⁴ Compl. ¶¶ 15, 17, 18, 21; Lewis Decl. ¶ 3; Edman Decl. ¶ 10; Lujan Decl. ¶ 7; Kotterman Decl. ¶¶ 9-12.

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according to discoverable and manageable standards.” *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 7 (2006).

In *Forty-Seventh Legislature*, the Arizona Supreme Court rejected the political question argument. In that case, the issue was whether the Governor’s veto of a measure involving “an item of appropriation of money” exceeded her veto authority under the Arizona Constitution. The Governor argued that the issue was a political question outside the court’s purview. The Arizona Supreme Court disagreed and held that it was the court’s role “to determine whether a branch of government has exceeded the powers granted by the Arizona Constitution” and “[t]he political question doctrine...provides no basis for judicial abstention[.]” *Id.*

The same reasoning applies in this case. The Court is not asked to decide (nor will it) whether the Legislature should enact policy or what that policy should be. The issue here is not *what* the Legislature decided but *how* it decided what it did. The State argues that the BRBs need not comply with the title and single subject requirements despite a constitutional mandate that “[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title[.]” BRBs are not exempt from this mandate. *Hoffman v. Reagan*, 245 Ariz. 313, 316 (2018) (single subject rule applies to “every ‘act’ considered by the legislature.”) Arizona courts have been enforcing the title and single subject rules for decades as evidenced by the number of cases cited in the parties’ briefs and this ruling. Whether the Legislature complied with the requirements of Section 13 and whether a provision is reasonably related to “budget reconciliation” are questions properly before the Court.

b. Emergency exception

The emergency referendum exception is found in Art. IV, p. 1, §1. It grants the Legislature the authority to pass “emergency measures” “immediately necessary for the preservation of the public peace health, or safety” and exempt from the referendum power of the people. See *Orme v. Salt River Valley Water Ass’n*, 25 Ariz. 324 (1923). Relying on *Orme*, the Arizona Supreme Court later held that a legislative determination that an emergency exists is not reviewable by the judiciary. *City of Phoenix, v. Landrum & Mills Realty Co.*, 71 Ariz. 382 (1951). See also *Stone v. City of Prescott*, 173 F.3d 1172 (9th Cir. 1999).

Treating BRBs as equivalent to an emergency is not persuasive. If an emergency existed in June 2021, it was due solely to internal disagreements that delayed passage of the budget to the very last minute. That is not the kind of emergency that confers unreviewable authority as an emergency exception. Under the State’s theory, the Legislature has complete authority to determine what is necessary to implement the budget including, for example, school curriculum, dog-race permitting, and the definition of “newspaper.” This argument negates Section 13 and the stack of appellate decisions enforcing Section 13’s requirements for legislation.

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Another flaw in the State's argument is this: The referendum emergency exemption found in Art. IV, pt.1 § 1(3) -- which contains no language restricting the decision-making authority of the Legislature -- is a grant of power. By contrast, Section 13 explicitly restricts the process the Legislature must follow in enacting legislation. While the emergency exception empowers the Legislature to act, Section 13 limits how they do it. Section 13 does not restrict policy; it does place limitations on the process to ensure transparency and to protect the public's access to information about legislative action.

The political question and emergency exception defenses are misplaced. It is the Court's role to determine whether the Legislature exceeded its constitutional authority.

THE SUBJECT

To assess whether the bills comply with Section 13, the first issue is *what is the subject of each bill?* Section 13 states that every act "shall embrace but one *subject* and matters properly connected therewith, which *subject* shall be expressed in the title[.]" (emphasis added). Therefore, the analysis begins with identifying the subject matter.

Our appellate courts interpret the word "subject" broadly. In *Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980), the Court of Appeals described the subject of a bill as "all matters having a logical or natural connection." It stated that an act should embrace "one general subject," meaning matters that "fall under some one general idea, be so connected with or related to each other, either logically or in in popular understanding, as to be parts of, or germane to, one general subject." *Id.*

Here, the "one general idea" is "budget reconciliation." As stated, the bills are in fact BRBs. The words "budget reconciliation" appear in the title of each bill. And, the Senate Fact Sheets expressly state that the purpose of the BRBs is to "[make] statutory and session law changes...to implement the FY 2022 state budget." (Motion, Exhs. 3, 4, 5, and 6.)

In addition, the contents relate to budget reconciliation. Most of the provisions in HB2898, SB1824, and SB1825 have some natural or logical connection to the appropriations for the named area of the budget. SB1824 covers funding matters for various health-related medical programs, services, and funds. SB1825 effects changes to university and community college-related expenditures. HB2898 amends over 100 statutes pertaining to public and charter schools and related programs. Even some provisions in SB1819 arguably relate to appropriations. Except for the unrelated subjects covered in SB1819, the contents confirm that budget reconciliation is the subject.

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The sole distinction among the bills is the particular area of state government the bill impacts – K-12 education, higher education, health, and “budget procedures.” As discussed below, these words limit the budget reconciliation measures in the bill to the substantive area identified in the title. Accordingly, HB2898 pertains to budget reconciliation related to K-12 Education appropriations; SB1824 pertains to budget reconciliation for health-related appropriations; for SB1825, budget reconciliation for those portions of the budget related to higher education; and for SB1819, budget reconciliation pertaining to something called “budget procedures.”

The State disagrees. It contends that the subject is the substantive area identified in the title. For example, the State argues that subject of SB1824 is “health,” and, therefore, any health-related measure may be included in SB1824.

That is not correct. 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. *Litchfield, supra.*; *Hoffman, supra.* 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.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019).

The State’s argument would render the concept of “budget reconciliation” meaningless. The *Litchfield* court warned that constitutional provisions should be interpreted liberally “but not so ‘foolishly liberal’ as to render the constitutional requirements nugatory.” 125 Ariz. at 224. In this case, the State’s view would allow the Legislature to re-define “budget reconciliation” to mean anything it chooses. Going forward, the Legislature could add any policy or regulatory provision to a BRB, regardless of whether the measure was necessary to implement the budget, without notice to the public. The State’s idea of “subject” is not and cannot be the law.

TITLE REQUIREMENT

Next, the Court considers whether the titles of the bills comply with Section 13’s title requirement. In other words, do the titles reflect the challenged provisions? The title “must be worded so that it puts people on notice as to the contents of the bill.” *State v. Sutton*, 115 Ariz. 417, 419 (1977). The title may not mislead. It should “enable 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 (quotations omitted). The title need not be a complete index, but should disclose “the subject matter of the legislation, and of

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the interests that are or may be affected thereby, and to [sic] put anyone having an interest in the subject matter on inquiry.” *In re Lewkowitz*, 70 Ariz. 325, 329 (1950) (emphasis and citation omitted).

The title must reflect the legislation included under it. It may be “broad in scope thereby giving notice of a broad range of legislation.” *Sutton*, 115 Ariz. at 419. Or, it may be “made narrow and restricted, in which case the legislation must likewise be narrow and restricted.” *State Board of Control v. Buckstegge*, 18 Ariz. 277 285 (1916). The Court has no authority to enlarge the title. *White v. Kaibab Road Improvement District*, 113 Ariz. 209, 212 (1976) (“The Constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so.”)

Below the Court considers whether the title of each bill gives adequate notice of the challenged provisions.

HB2898

HB2898’s title is: AN ACT AMENDING (approximately 100 statutes identified by number only); APPROPRIATING MONIES; RELATING TO KINDERGARTEN THROUGH GRADE TWELVE; BUDGET RECONCILIATION

Plaintiffs challenge Sections 12, 21, and 50. Section 12 prohibits “a county, city, town, school district governing board or charter school governing body” – from “require[ing] the use of face coverings by students or staff,” and prohibits school districts and charter schools from “require[ing] a student or teacher to receive a vaccine for COVID-19 or to wear a face covering to participate in in-person instruction.” (Compl. ¶ 53)

Section 21 prohibits “a teacher, administrator or other employee of a school district, charter school or state agency who is involved with students and teachers in grades preschool through the twelfth grade” from teaching curriculum “that presents any form of blame or judgment on the basis of race, ethnicity or sex.” It further prohibits teaching “concepts,” including the idea that an individual “should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual’s race, ethnicity or sex.” And it authorizes “disciplinary action” and enforcement action against a teacher who violates this section. (Compl. ¶¶ 57-58)

Section 50 authorizes the Attorney General to initiate civil actions against a “public official, employee or agent of this State” who uses public resources to “organize, plan or execute any activity that impedes or prevents a public school from operating for any period of time,” and

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against any teacher or other employee “whose violation of [Section 21] resulted in an illegal use of public monies.” (Compl. ¶ 59-60)

The Court finds that HB2898’s title does not provide notice that the bill would: (1) ban public schools from implementing mask mandates; (2) ban and penalize teaching certain curriculum; or (3) authorize lawsuits against state employees for vaguely-defined conduct related to public schools. None of these measures remotely pertains to the budget or budget reconciliation. Sections 12 and 21 would enact laws regulating public schools disguised as a budget measure. Section 50 would create a civil cause of action. What do these measures have to do with the budget?

In addition, the State’s defense of Section 12 banning mask and vaccine mandates in public and charter schools is particularly disturbing. According to the State, this provision is necessary to reconcile the budget because it may “potentially [reduce] overall enrollment and funding.” (Response, p. 8) The State fails to present any information from the legislative record to support this argument. More concerning is the suggestion that the Legislature would see this provision as a means to de-fund public and charter schools by discouraging staff and student attendance. There is no question that the bill’s title provided no notice of that policy measure.

SB1825

The title of SB1825 is: AN ACT AMENDING (approximately 12 statutes identified by number); APPROPRIATING MONIES; RELATING TO BUDGET RECONCILIATION FOR HIGHER EDUCATION

Plaintiffs challenge Section 2. This section states that, subject to limited exceptions, “universities and community colleges” may not require “that a student obtain a COVID-19 vaccination or show proof of receiving a COVID-19 vaccination or place any conditions on attendance or participation in classes or academic activities, including mandatory testing or face covering usage, if the person chooses not to obtain a COVID-19 vaccination or disclose whether the person has been vaccinated[.]” It also prohibits public universities from implementing testing requirements unless a significant outbreak occurs and, even then, only with approval from the department of health services.” (Compl. ¶ 63-64)

The Court finds SB1825’s title provides no notice that the bill would prohibit universities and community colleges from requiring vaccinations and alternative COVID-10 mitigation measures.

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SB1824

The title of SB1824 is: AN ACT AMENDING (approximately 21 statutes identified by number]; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION

Plaintiffs challenge Sections 12 and 13. Section 12 provides that “an immunization for which a United States Food and Drug Administration emergency use authorization has been issued” cannot be required for school attendance, and immunizations cannot be required for school attendance unless set forth in a rule by the Director of the Department of Health Services. (Compl. ¶ 67)

Section 13 prohibits the State or any city, town, or county “from establishing a COVID-19 vaccine passport,” or requiring that any person “be vaccinated for COVID-19” or that any business obtain “proof of the COVID-19 vaccination status of any patron entering the business establishment.” (Compl. ¶ 68)

SB1824’s title provides no notice that the bill includes provisions (1) providing that an immunization that has an FDA emergency use authorization cannot be required for school attendance; (2) that immunizations cannot be required for school attendance unless set forth in a rule by the Director of the Department of Health Services; or (3) that no city or town can establish “a COVID-19 vaccine passport” or require businesses to obtain proof of vaccination status.

SB1819⁵

SB1819’s title is: AN ACT AMENDING (approximately 31 statutes by number only); APPROPRIATING MONIES, RELATING TO STATE BUDGET PROCEDURES

The Complaint challenges six provisions:

Section 4 (16-138) requires the Secretary of State to give access to the statewide voter registration database to any “person or entity that is designated by the legislature” to review voters who are registered to vote for federal only races.

⁵ Plaintiffs challenge SB1819 under both the title and single subject requirements.

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Section 5 sets forth various requirements for “fraud countermeasures” used in paper ballots.

Section 33 grants the Attorney General the authority to defend election laws and to “speak[] for this state” in “any proceeding in which the validity of a state election law is challenged” “through January 2, 2023.”

Section 35 provides that “the secretary of state shall submit to the United States election assistance commission a request that the commission include on the federal voter registration form this state’s state-specific instructions to provide proof of citizenship.”

Section 39 prohibits a “county, city or town” from adopting “any order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts private businesses, schools, churches or other private entities, including an order, rule, ordinance or regulation that mandates using face coverings, requires closing a business or imposes a curfew.”

Section 47 establishes a “special committee” to review the findings of the senate audit of the 2020 general election.

The Court considers whether a BRB titled “relating to budget procedures” provides adequate notice of the challenged provisions.⁶ The Court finds that it does not. “Budget procedures” is not defined in the record or the bill. However, looking at the plain meaning of the words, “budget” clearly refers to the 2021-2022 budget process, and the dictionary defines “procedure” as “a particular way of accomplishing something; a series of steps followed in a regular definite order.” www.merriam-webster.com. So what do “fraud countermeasures” in ballots (Section 5) have to do with a procedure for the budget? How does proof of citizenship on a federal form advance a budget procedure? These and the other challenged provisions have no relation to the budget and SB1819’s title does not provide any notice that they are included in the bill.

The State tries to salvage these provisions by revising them in its Response to include a monetary tether where none exists. For example, the Response describes Section 39 as “directing certain political subdivisions not to spend public funds or resources to enact or enforce certain regulations impacting private businesses.” (p. 9). That is not what Section 39 says. It expressly prohibits local jurisdictions from adopting any “order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts private business, school, churches or other private entities” with no mention of public funds or resources.

⁶ Although the words “budget reconciliation” do not appear in the title, the parties agree that SB1819 is a BRB and the bill’s the short title as shown in its Senate Fact Sheet is “budget procedures; budget reconciliation; 2021-2022.”

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In sum, each of the challenged provisions violates the title requirement of Section 13. The titles list statutes by number, identify an area of the state government (K-12, etc.), and state the bills/amendments are for “budget reconciliation.” By listing specific statutes and restricting the amendments to “budget reconciliation,” the Legislature gave notice that the contents of the BRBs concerned budget reconciliation matters. For the reasons stated, the challenged provisions do not reasonably relate to budget reconciliation matters.

SINGLE SUBJECT RULE

Section 13’s single subject rule requires that each bill “embrace some on general subject.” *Litchfield*, 125 Ariz. at 224. It is “designed to prevent the evils of omnibus bills, surreptitious, and ‘hodgepodge’ legislation.” *Id.* An act violates this rule if it contains two or more “dissimilar and discordant subjects” that “by no fair intendment can be considered as having any legitimate connection with or relation to each other. *Id.*

The rule is also intended to prevent “logrolling,” the practice of lumping multiple subjects into one bill so that a vote to support a favored measure is a vote to support all measures. The Arizona Supreme Court has made it clear that logrolling is unlawful. In *Bennett v. Napolitano*, 206 Ariz. 520, 528 (2003), the issue involved “omnibus reconciliation bills (OMBs),” similar to the BRBs in this case. While deciding the case on other grounds, the Court nevertheless identified the bills’ “apparent non-adherence to the single subject rule in the legislative process.” The Court described multi-subject bills as a “Hobson’s choice,” stating “multiple subjects in the same bills tends to undermine the legislative process by stifling valuable debate.” *Id.* at 528. *See also Hoffman*, 245 Ariz. at 316 (“The single subject rule is meant to prevent ‘log-rolling,’ or combining different measures into one bill so that a legislature must approve a disfavored proposition to secure passage of a favored proposition.”)

The Court has considered Plaintiff’s claim that SB1819 violates the single subject rule. Yes, it does.

SB1819 consists of multiple, unrelated subjects: dog-racing permitting; voter registration; the Governor’s emergency powers; the definition of a “newspaper”; local authority to pass COVID-19 mitigation measures; the study committee on missing and indigenous peoples; the practices of social media platforms and internet search engines relating to political contributions; the creation of a “special committee” to review the Maricopa County election “audit”; requirements for the agreement of unit owners to terminate a condominium; the State Capitol Museum, and public retirement systems. None of these subjects have any logical connection to each other nor “fall under some one general idea.” *Litchfield*, 125 Ariz. at 224.

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The State argues that SB1819 nevertheless satisfies the single subject rule because the provisions share a common purpose as “budget procedures.” Respectfully, the Court disagrees. What “budget procedure” does SB1819 pertain to? A procedure for the State Capital Museum? Procedures to administer the Public Safety Personnel Retirement System? 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.” The bill is classic logrolling – a medley of special interests cobbled together to force a vote for all or none.

REMEDIES

Section 13 and case law provide a remedy for bills that violate the title requirement. Provisions that exceed the scope of the title are void and severed so that the balance of the bill may stand. Section 13 states that any subject “not [be] expressed in the title...shall be void.” When a title “particularizes some of the changes to be made by the amendment[s], 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 v. Superior Court in and for County of Maricopa*, 161 Ariz. 224, 230 (App. 1989); *Sutton, supra*. (finding title regarding theft-of-credit card did not reflect change to penalties for theft with intent to defraud); *American Estate, supra*. (finding the title failed to express the tax portion of the act).

When an act violates the single subject rule, the whole act fails. *Litchfield*, 125 Ariz. at 226. Severability is not available as a remedy because there is no way for the Court to discern the dominant subject of the act. The Court finds that SB1819 is not severable for this reason.

EQUAL PROTECTION CLAUSE

Because HB2898, Section 12 (banning COVID-19 mitigation measures in public and charter schools), is void, the Court need not reach the issue of whether Section 12 also violates the equal protection clause as asserted in Counts V and VI.

CONCLUSION

In *Bennett*, the Arizona Supreme Court apprised the Legislature that the single subject and title requirements apply to budget-related bills. And, in *Hoffman*, the Court specifically stated the single subject rule applies to every act considered by the Legislature. Despite these warnings, the Legislature passed four budget reconciliation bills that fail to meet the constitutional requirements of Section 13. For the reasons stated, the Court finds that the BRBs violate the title requirement and SB1819 also violates the single subject rule.

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IT IS ORDERED finding in favor of Plaintiffs on Counts I and III (declaratory judgment) of the Complaint; and declaring SB1819; Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; and Section 2 of SB1825 are unconstitutional and, therefore, void.

IT IS FURTHER ORDERED that the request for injunctive relief in Counts II and IV of the Complaint and the Motion for Preliminary Injunction is moot at this time. Given the Court's declaration that the foregoing matters are unconstitutional, the Court need not rule on injunctive relief. *See Forest Grove School District v. T.A.*, 557 U.S. 230, 247 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute.") If there is non-compliance, further relief based on declaratory judgment is available under A.R.S. §12-1838. *See also Valley Oil Co. v. City of Garland*, 499 S.W.2d 333, 335 (TX App. 1973) (parties are expected to recognize rights declared by the judgment and act accordingly; courts may issue subsequent coercive orders to enforce the judgment if necessary).

IT IS FURTHER ORDERED that the relief requested in Counts V and VI under Art. II, §13 (equal protection clause) is moot at this time. The Court does not reach the issue of whether Section 12 HB2898 violates the equal protection clause because the Court finds Section 12 of HB2898 unconstitutional on other grounds.

IT IS FURTHER ORDERED directing entry of a final judgment pursuant to Rule 54(b), Ariz. R. Civ. Proc. This ruling adjudicates fewer than all of the claims as Plaintiffs' claim for attorneys fees and costs remains. The Court finds no just reason to delay entry of judgment on the claims discussed herein.

IT IS FURTHER ORDERED that no later than **October 12, 2021**, Plaintiffs shall file their Application for Attorneys' Fees and Costs. The State shall file any objection/response by **November 1, 2021**. Plaintiffs shall file a Reply by **November 15, 2021**.

IT IS FURTHER ORDERED denying the State's request to apply this ruling prospectively only. The State asserts that because no Arizona court has "ever" applied the single subject rule to BRBs, this court's ruling should be prospective only and the BRBs should be allowed "to stand." As discussed above, the requirements of Section 13 apply to every act of the Legislature. This is not new law. The Arizona Supreme Court has repeatedly recognized and enforced Section 13's constitutional requirements. The BRBs are not exempt from these requirements.


KATHERINE COOPER
JUDGE OF THE SUPERIOR COURT

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FOR ALL IN-PERSON APPEARANCES: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2021-109 and the Maricopa County Superior Court Administrative Order 2021-119 require all individuals entering a court facility in Maricopa County to wear a mask or face covering at all times that they are inside the facility. Any person who refuses to wear a mask or face covering as directed by court personnel will be denied access to the facility. If a participant is denied physical access to a courthouse for refusing to wear a face covering, the participant must contact the assigned judicial division to determine whether the person can participate in the proceeding using an audio or video connection.