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

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-1[9] 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 <u>over 100 statutes being amended</u>, 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.

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[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. . . .
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> 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

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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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