IN THE SUPREME COURT
OF THE STATE OF ARIZONA

ARIZONA SCHOOL BOARDS ASSOCIATION INC., et al., Plaintiffs/Appellees, v. STATE OF ARIZONA, a body politic, Defendant/Appellant.	Arizona Supreme Court Case No. CV-21-0234-T/AP Court of Appeals Division One Case No. 1 CA-CV 21-0555 Maricopa County Superior Court Case No. CV2021-012741

AMICI CURIAE BRIEF OF SENATOR VINCE LEACH, SENATOR DAVID GOWAN, AND REPRESENTATIVE REGINA COBB IN SUPPORT OF PETITIONERS

(FILED WITH CONSENT OF ALL PARTIES)

Brett W. Johnson (#021527)
Ian R. Joyce (#035806)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
Telephone: 602.382.6000
E-Mail: bwjohnson@swlaw.com
ijoyce@swlaw.com

Attorneys for Amici Curiae Senator Vince Leach, Senator David Gowan, and Representative Regina Cobb

INTRODUCTION

Although the Trial Court's ruling in *Arizona School Boards Assoc. Inc. v. State*, Case No. CV2021-012741 (Sup. Ct. 2021) (the "Ruling") suffers from many defects, the most concerning is its treatment of the subject matter requirement in Ariz. Const. art. IV, pt. 2 § 13 (the "Single Subject Rule").[1] At once, the Ruling was both too broad and too narrow: it utilized a surprisingly expansive interpretation of the Single Subject Rule—one that has never been endorsed by Arizona Courts in any context—while at the same time focused its analysis singularly on individual provisions found in Ariz. Session Laws ch. 405 ("S.B. 1819"), one of the *eight* separate "budget reconciliation bills" ("BRBs") passed by the Legislature to effectuate the FY 2022 budget. The Trial Court's unique approach was in error and should be reversed.

First, this Court has repeatedly advised that the Single Subject Rule should be read "liberally so as not to impede or embarrass the legislature." *Hoffman v. Reagan*, 245 Ariz. 313, 316 ¶ 14 (2018) (quotation omitted). Yet, the Trial Court: conducted a microscopic, line-by-line, review of individual provisions found in S.B. 1819; cherry-picked provisions within that bill that, in the Trial Court's subjective view, appeared to be unrelated to each other; ignored that all these provisions relate to the

[1] While this *amici* brief only addresses the Single Subject Rule, Senators Leach and Gowan, and Representative Cobb join in other *amici* briefs supporting Petitioners.

budget; and then used these supposedly "unrelated" provisions to justify invalidating S.B. 1819 under the auspices of the Single Subject Rule. It is hard to fathom a more *conservative* approach than that used by the Trial Court here.

Second, S.B. 1819 does not violate the Single Subject Rule. The Trial Court's holding otherwise was based on the incorrect determinations that: (1) the relevant "single subject" here is "Budget Procedures" and (2) that the Single Subject Rule requires each provision in a bill to relate to *each other*. But because BRBs are "used to implement the appropriations in the state's budget," Ruling at 3, the relevant "subject" here is the *budget*, not "Budget Procedures." And the Single Subject Rule does not require individual provisions in a bill to be related to each other, rather, provisions must simply be related to the bill's "single subject." Regardless, the Legislature has broad discretion, dictated by the separation of powers, to determine what provision should fall into what BRB.

Third, if upheld, the Ruling will throw the State's budgeting process into disarray. The Ruling threatens the fundamental—and critical—BRB system, by opening the door for extensive, post-hoc, judicial review of those necessary measures. Should a *single* provision, in a *single* BRB arguably fall outside of the BRB's supposed subject, then the entire State budget—and the ability to fund vital governmental activities—is at risk if the Ruling is upheld. In short, the Ruling transforms the judiciary into the maestro of the budgeting process, through a

contorted and untenable analysis unsupported by the facts or the law.

INTERESTS OF AMICI CURIAE AND FINANCIAL DISCLOSURE

All three *amici curiae* are elected members of the Arizona Legislature, with the specific responsibility for allocating the State's resources in accordance with statutory and constitutional mandates.[2] Senator Vince Leach is an elected member of the Arizona Senate and serves as the vice-chair of the Senate Appropriations committee. Senator David Gowan is an elected member of the Senate and serves as the chair of the Senate Appropriations committee. Representative Regina Cobb is a member of the House of Representatives and serves as the chair of the House Appropriations committee. In short, Senator Leach, Senator Gowan, and Representative Cobb have a unique interest in and understanding of the State's budgeting process—a Legislative procedure that is threatened by the Ruling.

ARGUMENT

I. The Trial Court's Analysis Was Fundamentally Flawed.

A. The Trial Court Applied a Narrow Standard of Review.

While Ariz. Const. art. IV pt. 2 § 13 requires that "[e]very act shall embrace but one subject and matters properly connected therewith," the Constitution does not define or otherwise explain what constitutes "one subject." In recognition that such

[2] Pursuant to ARCAP 16(b)(3), *amici* disclose that the Arizona Small Business Association provided financial resources for the preparation of this brief.

a determination is inherently subjective, this Court has explained that the Single Subject Rule should be read "liberally so as not to impede or embarrass the legislature." *Hoffman*, 245 Ariz. at 316 ¶ 14 (quoting *Litchfield Elementary Sch. Dist. No. 79 v. Babbitt*, 125 Ariz. 215, 224 (App. 1980)). Courts therefore interpret the "subject" of a challenged bill broadly, requiring only that the provisions in an act fall "under some one general idea." *Id.* at 316 ¶ 13.

The Trial Court did not employ such a "liberal" approach here. Although the Trial Court at first correctly acknowledged that "BRBs are budget-related bills that exist to provide the substantive law necessary to carry out the State's annual appropriations," Ruling at 3, it removed this context in its Single Subject Rule analysis. Instead of reviewing S.B. 1819's provisions to determine whether each related to the *budget*, the Trial Court focused on whether provisions within S.B. 1819 sufficiently related to "Budget *Procedures*" (the "subject" supposedly embraced by S.B. 1819) or whether the provisions in S.B. 1819 sufficiently relate to *each other*. *Id.* at 13.

In so doing, the Trial Court adopted a remarkably narrow view of the Single Subject Rule. Followed to its logical conclusion, the Trial Court's ruling seemingly requires the Legislature to enact a separate BRB for every single topic covered by the general appropriations bill that could plausibly be viewed as a single "subject." Is "K-12" a sufficiently broad subject for a BRB? Or are more specific BRBs (*e.g.,*

a BRB dedicated to the School Facilities Board) required? This problem is avoided under the "liberal" approach, which would have recognized that the undergirding "subject" embraced by each BRB is the budget itself.

The Trial Court's holding is particularly egregious when compared to the incredibly deferential approach Arizona courts have historically taken when reviewing statutory initiatives (sponsored almost exclusively by out of state interests). Statutory initiatives are notoriously stocked with dozens of disparate provisions;[3] they are the exact type of "hodgepodge" measures that Respondents complain about here. Yet, notwithstanding the public confusion that recent initiatives have caused, Courts are still *extraordinarily* lenient when reviewing challenges to statutory initiatives. For example, while it is well established that an initiative's 100 word summary must "describe the principle provisions to accurately communicate [the initiative's] general objectives," only summaries that are "objectively false or misleading . . . or obscure[] the principal provisions' basic thrust" fail this extremely low bar. *See Molera v. Hobbs*, 250 Ariz. 13, 673-674 ¶¶ 13 (2020). Courts are hesitant to even "enmesh" themselves in 100 word summary disputes, due to the deference given to out of state drafters. *See id.* at ¶ 11.

[3] For example, the "Stop Surprise Billing and Protect Patients Act" initiative contained provisions related to, among other things: (1) insurance reimbursement rates for ambulance trips; (2) minimum wage for certain workers at health care facilities; and (3) safety standards to prevent hospital acquired infections.

There is not a specific single subject rule for statutory initiatives. *Arizona Chamber of Commerce & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 31 (2017). But this fact only *supports* a "liberal" construction of Ariz. Const. art. IV, pt. 2 § 13. There is no reason to allow statutory initiatives sponsored by out of state interests to go completely unchecked, on the one hand, then on the other apply an incredibly stringent review of the procedures used by Arizona's elected leaders to effectuate budgetary measures.

B. The Trial Court Incorrectly Evaluated S.B. 1819's Provisions Based on their Connection to "Budget Procedures" and to Each Other.

The Trial Court's Single Subject Rule analysis was also flawed in that it: (1) determined that "Budget Procedures" was the applicable "single subject" at issue—instead of the budget generally; and (2) determined that the Single Subject Rule requires that individual provisions in a bill have a "logical connection to *each other*." Ruling at 13-14 (emphasis added). Both determinations were in error.

1. The Relevant "Subject" is the Budget, Not Budget Procedures.

The Trial Court's view that the relevant "subject" here is "Budget Procedures" was apparently based on the title of S.B. 1819: "AN ACT AMENDING (approximately 31 statutes by number only); APPROPRIATING MONIES, RELATING TO STATE BUDGET PROCEDURES." *See* Ruling at 13. But the

Trial Court's singular focus on S.B. 1819's title misses the forest for the trees. And the Ruling interferes with the Legislature's Constitutional right to handle its own internal administrative procedures. *See* Const. art. IV, pt. 2 § 8 ("Each house, when assembled, shall . . . determine its own rules of procedure.").

In enacting the State budget, the Legislature first passes a general appropriations bill. Ruling at 3; *see also* 2021 Ariz. Session Laws, ch. 408 (S.B. 1823). Often, "it is necessary to make statutory and session law changes to effectuate" that general appropriations bill. Ruling at 3 (quotation omitted). However, because general appropriations bills "shall embrace nothing but appropriations," Ariz. Const. art. IV, pt. 2 § 20, "separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions." Ruling at 3. Thus, at bottom, "[a] BRB is a bill used to *implement* the appropriations in the *State's budget*." Ruling at 3 (emphasis added).

In short, BRB's are one part of the complex legislative *budgeting* process. *See* Ruling at 3. The relevant question in the Single Subject Rule analysis, therefore, is not whether any given provision in a BRB is related to the BRB's assigned subject matter (*e.g.*, "Health" or "Higher Education"), but instead whether that provision is reasonably connected to the *general appropriations bill*. Although the Trial Court acknowledged this in other aspects of its holding (at 8-13), it entirely failed to determine whether S.B. 1819's provisions have a connection to the budget in its

Single Subject Rule analysis.[4] This is clear error.

2. The Trial Court Incorrectly Evaluated Whether Individual Provisions in S.B. 1819 Relate to *Each Other*.

The Trial Court also erred in basing its Single Subject Rule analysis on whether individual provisions in S.B. 1819 had "any logical connection to *each other*." *See* Ruling at 13 (emphasis added). In making this ruling, the Trial Court misinterpreted language used in other Single Subject Rule cases stating that the provisions in a bill must not endorse multiple *subjects* that lack "any connection with or relation to each other." *See id.* at 13 (quoting *Litchfield*, 125 Ariz. at 224).

But this Court has explicitly rejected the type of granular and unworkable approach endorsed by the Trial Court. In *Hoffman*, for example, plaintiffs challenged HCR 2007, which contained two disparate amendments to the Citizens Clean Elections Act. *Hoffman*, 245 Ariz. at 316 ¶ 16. "[O]ne section would prohibit clean elections money from flowing to political parties, while the other would subject the [Citizens Clean Elections Commission's] rulemaking to oversight by [the Governor's Regulatory Review Council]." *Id.* Although these two provisions were distinct from each other, the Court found that "HCR 2007 satisfies the single subject rule" because "the amendments embrace 'one general subject'—the CCEA." *Id.* at

[4] The Trial Court did address whether certain provisions in S.B. 1819 relate to the budget in its discussion of Ariz. Const. art. IV pt. 2 § 13's "title" requirement. Ruling at 8-12. The Trial Court's analysis there was incorrect for the reasons stated *infra* Section II.

316 ¶ 15.

Similarly, in cases concerning the analogous single subject rule for constitutional amendments, Ariz. Const. art. XXI § 1, this Court has rejected a "very narrow" test that would require "all components of a provision be logically dependent on one another." *Korte v. Bayless*, 199 Ariz. 173 176 ¶ 10 (2001). But, this is exactly the type of test the Trial Court employed here. Ruling at 13.

The Ruling should be overturned on these grounds alone.

II. S.B. 1819 Does Not Violate the Single Subject Rule.

A. Each Provision in S.B. 1819 is Related to the Budget.

Each provision in S.B. 1819 has at least some connection to the general appropriations bill, which was completely ignored by the Trial Court here.

Amici staff recently analyzed the connection between each provision in S.B. 1819 and S.B. 1823 (the general appropriations bill). [*See* APPX000003-9.] This brief will not repeat every explanation in that analysis, but it effectively dispenses with the Trial Court's view that provisions in S.B. 1819 are unrelated to S.B. 1823.

For example, the Trial Court claimed that two of the supposedly disparate "subjects" in S.B. 1819 include: (1) "the study committee on missing and indigenous peoples" (referring to S.B. 1819 § 32) and (2) "the practices of social media platforms . . . relating to political contributions" (referring to S.B. 1819 §§ 21, 49). Ruling at 13. But §§ 32, 21, and 49 are all related to the general appropriations act.

Section 32 modifies "the Missing and Murdered Indigenous Peoples Study to extend the committee through September 30, 2025," this is related to the budget because "Sec. 11 of 1823 appropriates $40,000 . . . for the ongoing costs of this committee." [APPX000004.] Sections 21 and 49 "establish the Unreported In-kind Political Contributions Task Force," this is related to the budget because "Sect. 11 of 1823 appropriates . . . $ 500k to the AG's Office to staff this task force." [APPX000005.]

The Trial Court attempted to avoid the obvious connection between provisions in S.B. 1819 to appropriations in S.B. 1823 by claiming that S.B. 1819 contains "policy provisions" rather than budget issues. Ruling at 2. But all budget decisions are, at some level, policy choices. Whether any given appropriation is related to "policy" or the "budget" is in the eye of the beholder. (Is appropriating $47.6 million to the Arizona Game and Fish Department, *see* S.B. 1823 § 39, an attempt to appease fisherman and hunters, or simply necessary to cover the Department's yearly expenses?) The Legislature, in carrying out its administrative duty to create a budget, has the initial prerogative to make these choices.

B. Each Provision in S.B. 1819 is Related to Budget Procedures; Regardless, the Legislature Has Discretion Over What Provisions to Include in a BRB.

Even if the relevant "subject" here is "Budget Procedures," each provision in S.B. 1819 is reasonably tied to this subject.

The Trial Court interpreted "Budget Procedures" in the literal sense, relying

on dictionary definitions to interpret the phrase to refer to statutory provisions that establish procedural rules. *See* Ruling at 12-14. But the phrase "Budget Procedures" in the BRB context often refers to measures that are required to satisfy the non-delegation principle. That is to say, "Budget Procedures" provisions are provisions that create a "sufficient basic standard" governing how to use appropriated funds.[5] *See State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205-206 (1971).

Here, provisions in S.B. 1819 do establish a "sufficient basic standard" governing the use of general appropriations. For example, S.B. 1823 § 40 appropriates $23 million to the Department of Gaming's Division of Racing; S.B. 1819 § 1 requires the Department to use these funds in part to "convert a dog racing permit to a harness racing permit by January 1, 2023." [APPX000003; *see also* A.R.S. § 5-110(H).] S.B. 1823 § 5 appropriates "$219 million to the Department of Administration to operate various programs;" S.B. 1819 § 23 clarifies that these funds should be used in part to initiate review of agency rules, policies, or procedures. [APPX000006.]

Even if some provisions in S.B. 1819 are arguably not related to "Budget Procedures," the determination of whether any given provision is appropriately

[5] Because S.B. 1819 has a unified "single subject," the Trial Court erred by declining to conduct a severability analysis. *See e.g.*, *Norton v. Superior Court*, 171 Ariz. 155, 158 (App. 1992).

placed in the "K-12" BRB, or "Budget Procedures" BRB, or "Revenue" BRB, or "Transportation" BRB is within the purview of the Legislature. Ariz. Const. art. IV, pt. 2 § 8. For whatever reason, the Legislature determined that each of S.B. 1819's 52 provisions fell into the category of "Budget Procedures"—it is not the Judiciary's authority to second-guess that decision (especially where, as here, individual Legislators have not even brought a challenge). *See e.g., Sumner v. New Hampshire Secretary of State*, 136 A.3d 101, 106 (N.H. 2016) (finding claim based on violation of legislature procedural rules non-justiciable).

III. The Trial Court's Ruling Jeopardizes the Budget Process.

Finally, it must be noted that the Trial Court's ruling threatens the continued viability of the BRB process. It is simply not possible for the Legislature to adopt a single BRB for every single plausible "subject" that requires a BRB. The approach that the Legislature uses now—creating BRBs categorized based on general subject matters—is a reasonable compromise between the realities of modern day governing and the restrictions of the Single Subject Rule. Indeed, the BRB process was adopted in response to this Court's *dicta* in *Bennett v. Napolitano*, 206 Ariz. 520 (2003) that omnibus reconciliation bills "appear to address multiple subjects" in violation of the Single Subject Rule. 206 Ariz. at 528, ¶ 39 n.9. To now punish the Legislature for adopting the BRB approach would place form over function and throw the budgeting process into disarray.

***

The foregoing arguments are all supported by Senator Leach, Senator Gowan, and Representative Cobb. In addition, it is Senator Leach's and Representative Cobb's position that if the Court upholds the Trial Court's ruling, such a ruling should only apply to *future* State budgets, and not impact S.B. 1819 (or any other FY 2022 BRB). *See Turken v. Gordon*, 223 Ariz. 342, 351 ¶¶ 44-49 (2010). Senator Gowan does not join this argument, as it is his position that the Judiciary lacks any authority to dictate the State's budget.

CONCLUSION

The Court should reverse the Trial Court's ruling.

RESPECTFULLY SUBMITTED this 15th day of October, 2021.

SNELL & WILMER L.L.P.

By */s/ Brett W. Johnson*
Brett W. Johnson
Ian R. Joyce
One Arizona Center
400 E. Van Buren Suite 1900
Phoenix, Arizona 85004

Attorneys for Amici Curiae Senator Vince Leach, Senator David Gowan, and Representative Regina Cobb