ARIZONA COURT OF APPEALS

DIVISION ONE

PIMA COUNTY, et al., Plaintiffs/Appellees, v. STATE OF ARIZONA, et al., Defendants/Appellants.	Case No. 1 CA-TX 20-0001 Arizona Tax Court No. TX2018-000737

STATE'S OPENING BRIEF

MARK BRNOVICH
Attorney General
State Bar No. 14000
2005 North Central Avenue
Phoenix, Arizona 85004
(602) 542-3333
(602) 542-8308

Drew C. Ensign
Deputy Solicitor General
Counsel of Record
Robert J. Makar
Assistant Attorney General
drew.ensign@azag.gov

Attorneys for the State of Arizona

Lisa Neuville
Jerry A. Fries
Assistant Attorneys General
(602) 542-8444
(602) 542-8385
tax@azag.gov

Attorneys for the Arizona Department of Revenue

Kevin D. Ray
Assistant Attorney General
(602) 542-8328
EducationHealth@azag.gov

Attorneys for the Arizona State Board of Education and the Arizona Superintendent of Public Instruction

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INTRODUCTION

In 2018, the Arizona Legislature did a curious thing: Both houses debated SB 1529 (the "Act"), which made specific statutory amendments to A.R.S. § 15-910. All involved in that debate agreed what the purpose and the effect of the amendment would be: ending the State's reimbursement of certain desegregation efforts/expenditures of Plaintiff Tucson Unified School District ("TUSD"), which have dragged on for four-plus decades without end in sight. On that clear understanding, legislators voted both for and against the amendment (as their statements reflect). The provision passed both houses and the underlying budget bill was signed into law by the Governor.

But the actual statutory provision enacted was a complete nullity. It has no effect in the real world. And although it was passed as part of a budget bill, it has zero budgetary effect as not a single cent would be spent differently as a result of the Act.

That, at least, is the construction of the Act that the tax court gave it. The Act has, for all intents and purposes, been judicially nullified. But that was patent error that this Court should correct. "It is a 'cardinal principle of statutory construction' that 'a statute ought,

upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation omitted). But the tax court went one step further than this cardinal prohibition: reading an *entire statutory provision* to be superfluous/void.

In doing so, the tax court accepted Plaintiffs' argument that the Act impermissibly attempts to amend the Arizona Constitution by mere statute. If that were true, Plaintiffs would have an exceedingly easy case: the Legislature obviously has no such power. But that is not what occurred here. Instead, the Legislature simply amended a *statute* to make an ordinary—and quintessential—budgetary decision: declining to fund an activity it previously had funded. Such budgeting choices are an entirely appropriate exercise of the Legislature's power-of-the-purse authority, and one that is made innumerable times without court invalidation. The same result should obtain here.

In particular, the tax court reasoned that the "statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L) [*i.e.*, the Act] cannot trump the constitutional limitation on ad valorem taxes found in Ariz. Const. art. 9, § 18." APP-11. But the Act does no such thing: this case

has nothing to do with whether Pima County is *taxing* too much under the Arizona Constitution and thereby exceeding the constitutional limitation, and everything to do with how state general funds are expended. And in deciding how to allocate general fund dollars, the Legislature is free to create its own statutory formulas absent a contrary constitutional command (of which none is alleged to exist here).

The tax court similarly reasoned that the State's interpretation—*i.e.*, the only one that gave the Act any actual budgetary effect—was "unworkable." APP-11. Not so. Implementing the Act is actually quite *simple*: the State no longer pays for TUSD's excess desegregation expenses that it previously did. TUSD is free to continue to spend millions of dollars in its four-decades-and-counting efforts to achieve unitary status and free itself from a federal desegregation order (assuming that it wants to be free at all). But the State will no longer pay for those never-ending efforts that never seem to achieve actual compliance.

Just as none of the legislators voting on the Act had any apparent difficulty in understanding what the effect of the Act was, the

Department of Revenue did not have the slightest trouble in implementing it. It simply subtracted out the non-qualifying expenses from what Plaintiffs claimed and paid the resulting amount. Plaintiffs' true problem is not that the Act is actually "unworkable." They simply don't like how it works. But that is a policy/budgetary decision for the Legislature to make, not the tax court or Plaintiffs.

Moreover, even if Plaintiffs' arguments were sufficient to render the text of the Act ambiguous (which they are not), Plaintiffs would still lose for two important reasons. *First*, Arizona courts are obliged to interpret statutes to be constitutional if at all possible. Courts may not simply throw up their hands and throw out terms like "unworkable" at the first hint of interpretive difficulty. A holding of unconstitutionality is only a *last*—not first—resort. The tax court, however, did not even try to construe the Act in a constitutional manner here. Instead, like Plaintiffs, it gratuitously sought a conflict so that the Act could be invalidated.

But a constitutional construction here is readily available and obvious: read the Act simply to be an ordinary budgetary provision. It was, after all, part of a budgetary bill. So construed, there is no

constitutional issue with the Act since Plaintiffs do not allege that the Legislature is under any constitutional compulsion to fund TUSD's seemingly endless desegregation expenses.

Second, when statutes are ambiguous, courts may properly consider legislative history. Here that history is entirely one-sided: *everyone* involved in the debate seemingly understood what effect the Act would have—it would end the State's reimbursement for TUSD's desegregation expenditures. Indeed, Pima County's own Administrator *admitted* as much. Thus, if the statutory text left any doubt as to what the intended effect of the Act was, the legislative history conclusively resolves it. Indeed, Plaintiffs have not submitted even a scintilla of contrary legislative history supporting their position.

Finally, it is important to note what this case is *not* about: *e.g.*, the evils of segregated schools—which are egregious and undeniable. And the reprehensibility of segregation only underscores the deeply regrettable nature of TUSD's failure to come into compliance with a desegregation order after 40 years of attempting to do so. This case, however, is only about whether the State may constitutionally cease

state funding of TUSD's efforts after 35 years of state-subsidized failure. It plainly can.

For all of these reasons, the tax court's judgment should be reversed.

STATEMENT OF THE CASE

Although nominally a tax case, this appeal ultimately is about expenditures of moneys rather than the raising of any particular revenues. Specifically, it concerns who is responsible for paying certain desegregation expenses incurred by TUSD: *i.e.*, the State or Plaintiffs Pima County/TUSD. From 1983 until 2018 the State paid those amounts. The parties appear to agree that the Legislature intended through the Act to cease that State funding in 2018, but disagree about the validity of the Act in effectuating that change.

Given this backdrop, it is useful to provide some background on TUSD's desegregation history, the statutory regime, and the legislative history.

TUSD Desegregation Litigation

In 1978, the U.S. District Court for the District of Arizona held that TUSD had operated a segregated school system in violation of

federal law. *See Fisher v. Tucson Unified Sch. Dist.*, 329 F. Supp. 3d 883, 887 (D. Ariz. 2018). The federal plaintiffs and TUSD entered into a settlement agreement to remedy the vestiges of unconstitutional discrimination in the district, with a presumptive five-year term. APP-138–39.

While TUSD generally complied with the express provisions of the settlement agreement, the case did not end after five years. Instead, "TUSD spent millions of dollars over the course of approximately twenty years before the [federal district] [c]ourt called for TUSD to show good cause why unitary status had not been obtained" in 2008. *Fisher*, 329 F. Supp. 3d at 888 (citation omitted). In 2008, the district court "found unitary status had been attained, but not without finding some fault with the District's failure to consider the effectiveness of the programs financed by desegregation dollars over this extended period of time." *Id.* The district court similarly admonished TUSD for inefficient spending, explaining that funds "must be spent to eliminate the vestiges of discrimination to [the] extent practicable rather than just being spent." APP-169.

The Ninth Circuit, however, reversed the district court's unitary-status finding in 2011. That court remanded to ensure that TUSD had met its burden of showing good-faith compliance with the settlement agreement and the elimination of the vestiges of past discrimination. *Fisher*, 329 F. Supp. 3d at 888 (citation omitted).

The district court appointed a special master on remand to develop a plan to achieve unitary status. *Id.* The parties entered into a stipulated plan, which the district court adopted in 2013. *Id.* The plan included a three-year minimum operational component, meaning it would end no sooner than the 2016-2017 school year. *Id.*

The district court reviewed the progress in 2018 and determined that TUSD had met its requirements in part, but needed to take some additional actions. *Id.* at 894, 979. As part of its 2018 order, the district court noted TUSD's "previous reticence" in its "commit[ment] to bringing this [desegregation] case to a conclusion." *Id.* at 892. The court further explained that as of 2018 "the School District has not yet demonstrated to the public, including African-American and Hispanic parents and students, its good-faith commitment to the whole of the [desegregation plan] and to those provisions of the law and the

Constitution that predicated judicial intervention." *Fisher*, 329 F. Supp. at 894.

As it currently stands, more than 40 years after the federal district court concluded that TUSD had operated a segregated school system, TUSD still has not come into full compliance with the 1978 desegregation order.

Arizona Law Regarding Property Taxes

School districts in Arizona raise substantial revenue through property taxes levied by counties. Such school revenues are generally subject to two independent ceilings: (1) the Arizona Constitution's one-percent cap on ad valorem taxes on residential property (the "One-Percent Limitation") in article 9, § 18 and (2) the statutory Revenue Control Limit (A.R.S. § 15-947).

1. *Constitutional One-Percent Limitation*

The Arizona Constitution limits the amount of property taxes that may be imposed within the State. The One-Percent Limitation of Article 9, Section 18 is particularly relevant here. That section provides: "The maximum amount of ad valorem taxes that may be collected from residential property in any tax year shall not exceed one

per cent of the property's full cash value as limited by this section." Ariz. Const. art. IX, § 18(1).

The One-Percent Limitation has enumerated exceptions, however. It does not apply to taxes levied (1) to pay for bonded indebtedness, Ariz. Const. art. IX, § 18(2)(a), (2) by certain special purpose districts, Ariz. Const. art. IX, § 18(2)(b), or (3) "pursuant to an election to exceed a budget, expenditure or tax limitation." Ariz. Const. art. IX, § 18(2)(c).

This constitutional provision notably does not use the terminology "primary" and "secondary" taxation. These terms are purely statutory in nature.

2. *Statutory Limits On Property Taxation*

Arizona statutory law also imposes limitations on property taxation. In particular, Title 15 creates a Revenue Control Limit, which is codified at A.R.S. § 15-947. In addition, Title 15 provides definitions for "primary" and "secondary" taxes, and accords them varying differing treatments.

Primary property taxes are generally defined as "all ad valorem taxes except for secondary property taxes." A.R.S. § 15-101(20). Primary property taxes are the main local tax funding source for

schools, and their amounts are used in calculating various levels of state and county aid to schools. *See*, *e.g.*, A.R.S. § 15-972(B), (D), (E). Secondary property taxes are generally defined as "ad valorem taxes used to pay the principal of and the interest and redemption charges on any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose by a school district or a community college district and amounts levied pursuant to an election to exceed a budget, expenditure or tax limitation." A.R.S. § 15-101(25). Thus, the definition of secondary property tax is similar, but not identical, to the Arizona Constitution's exceptions to the One-Percent Limitation.

The Revenue Control Limit is calculated according to a statutorily-prescribed formula, and provides county taxing authorities with an upper limit on revenue to fund general school district expenses. *See* A.R.S. § 15-944. Certain expenses are exempt from the Revenue Control Limit. *See* A.R.S. § 15-947. This includes expenditures for complying with a court order of desegregation as set forth in A.R.S. § 15-910. A.R.S. § 15-947(C)(2)(viii)(d). Given the application of the Revenue Control Limit, the State provides per-pupil and equalization funds to each district. *See* A.R.S. §§ 15-961, -971, -972(B).

State Reimbursement Of Desegregation Expenses – Pre-Act

Five years after the TUSD desegregation order, the Legislature enacted A.R.S. § 15-910(G) in 1983, which "allow[ed] school districts operating under court orders to generate additional tax revenues above and beyond [the Revenue Control Limit] to pay for desegregation activities." *Fisher*, 329 F. Supp. 3d at 887-88; APP-139. These expenses could be paid from a primary property tax levy. In the event a county's "primary" property tax levy from all taxing authorities, including school districts, exceeded the One-Percent Limitation, the county could reduce the total levy to the One-Percent Limitation and the State Treasury (*i.e.*, state taxpayers) paid the additional amounts. A.R.S. § 15-972(E). In Pima County, "[b]y and large the express provisions of the Settlement Agreement had been implemented within the five year period, but the case did not end. Instead, TUSD spent millions of dollars[.]" *Fisher*, 329 F. Supp. 3d at 888 (citations omitted).

For fiscal years 2014 through 2018, TUSD budgeted and presumably spent $318,555,235 on desegregation expenses. APP-219. During this period, the State provided over $67,000,000 to TUSD, for

those primary property tax amounts that would be in excess of the One Percent Limitation. APP-219–20.

2018 Passage Of The Act

In 2018, the Legislature amended A.R.S. § 15-910 as part of the budget reconciliation bill, Senate Bill 1529 ("SB1529"). The principal pertinent change of SB1529 was to add a subsection (L) to A.R.S. § 15-910. APP-176. The new subsection provides:

> L. Beginning in fiscal year 2018–2019, subsections G through K of this section apply only if the governing board uses revenues from secondary property taxes rather than primary property taxes to fund expenses of complying with or continuing to implement activities that were required or allowed by a court order of desegregation or administrative agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination that are specifically exempt in whole or in part from the revenue control limit and district additional assistance. Secondary property taxes levied pursuant to this subsection do not require voter approval, but shall be separately delineated on a property owner's property tax statement.

A.R.S. § 15-910(L).

Subsection (L) thus limits the ability of school districts to exceed the Revenue Control Limit for desegregation expenditures: they may do so "only if the governing board uses revenues from secondary property

taxes rather than primary[.]" A.R.S. § 15-910(L). The new secondary property taxes permitted by SB1529 "do not require voter approval, but shall be separately delineated on a property owner's property tax statement." A.R.S. § 15-910(L).

In addition, and most relevant here, now-secondary desegregation expenditures are no longer funded by the State as "additional state aid for education" to school districts because only "primary property tax amounts ... in the amount in excess of" the One-Percent Limitation are eligible for State funding under this provision. A.R.S. § 15-972(E). Under subsection (L), subsections G-K "apply only if the governing board uses revenues from secondary property taxes rather than primary property taxes." A.R.S. § 15-910(L).

The Act also made conforming changes to these subsections G-K by eliminating references to "primary" taxes or changing them to "secondary." APP-178–82. By confining desegregation expenses in excess of the Revenue Control Limit to funds derived from secondary property taxes, the Act effectively eliminates the ability of school districts and counties to seek reimbursement from the State under A.R.S. § 15-972(E) for those expenses. Instead, the property tax for

such expenditures can now only be levied in one of two ways: (1) if there is still room under the One-Percent Limitation after the levy of all primary property taxes, it can be funded by ordinary property taxes, or (2) the county can submit the tax to its voters in an override election, thus comporting with the third exception to the One-Percent Limitation. *See* Ariz. Const. art. IX, § 18(2)(c).

Legislative History

Legislators both for and against SB1529 recognized that it would shift responsibility for funding desegregation expenses to individual districts and away from the State Treasury. APP-143; APP-205–15.

Proponents of the Act sought to relieve State taxpayers of the responsibility to fund impacted school districts. Senator Smith noted the Act would "actually decreas[e] taxes for the rest of the citizens [of] the State of Arizona who are paying these districts—overage that they are paying." APP-210. Senator Kavanagh asserted the pre-Act situation was "about simply getting extra cash and requiring taxpayers throughout the entire state of Arizona to pay for that extra cash as opposed to the people in the district to pay for the extra cash." APP-211–12. He further asserted that such expenditures were "an unfair

levy on the citizens of Arizona and the fiscally responsible thing to do is to put the cost on the voters who vote in the school boards in those districts." *Id.* at 10.

Opponents of the Act similarly recognized that it would shift funding responsibility away from the State and onto individual districts. Senator Farley stated that the bill would not "affect the desegregation programs, [but would] just shift the funding that [was] helping with some of those desegregation programs from the State to the property owners in those districts." APP-208. Senator Quezada criticized the proposed shift in funding, stating that the bill "once again, is making people who are already struggling in life—working families—making them suffer even more for no reason whatsoever." APP-209.

Legislators were not alone in their understanding of the intent of the Act. Pima County's own Administrator C.H. Huckelberry stated in 2018 that the Act "appears to have been an attempt to place the burden of the desegregation taxes on residential property owners within the district [and] to eliminate most of the Additional State Aid to Education that has been paid by the state." APP-257.

Post-Enactment Developments

TUSD budgeted $63,711,047 for desegregation expenses in fiscal year 2018-2019. APP-114. TUSD claims that revenues for these expenditures were raised through secondary property taxes, and not primary property taxes. APP-115. $55,597,858 of the total amount fit within the One-Percent Limitation, and Plaintiffs requested the Treasury provide the remaining $8,113,188.62 as additional state aid for education under A.R.S. § 15-972(E).

Because that amount was composed of secondary property taxes, the Department of Revenue (the "Department") omitted it as ineligible from its additional state aid calculation for TUSD. APP-144. There is no indication either that the Department had any trouble applying the Act or that Plaintiffs were surprised by the Department's decision.

This suit followed.

Proceedings Below

Plaintiffs brought this action against the State, the Arizona Department of Revenue, the Arizona State Board of Education, and the Arizona Superintendent of Public Instruction (collectively, "Defendants" or the "State") in December 2018. APP-85. Plaintiffs sought an

injunction ordering the State to pay $8,113,188.62 to Pima County for the benefit of TUSD. The State moved to dismiss. APP-91. Plaintiffs responded, and moved for summary judgment. APP-104. The Tax Court declined to rule on the State's motion to dismiss until Plaintiffs' motion for summary judgment was "fully briefed and argued." APP-6. The State filed a response and cross motion for summary judgment. APP-123.

The Tax Court granted Plaintiffs' motion for summary judgment and denied the State's motions in a four-page order on June 25. APP-9. That court recognized that the effect of the Act was to give desegregation expenses the "statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L)." APP-11. It also noted that state reimbursement is only available for primary taxes. APP-10.

The Court, however, concluded that the State's interpretation denying reimbursement to Plaintiffs was "unworkable." APP-11. That judgment appeared to rest in part on tension between the specific secondary-tax definition for desegregation expenses of A.R.S. § 15-910(L) and the general definition of secondary taxes in A.R.S. § 15-

101(25). *Id.* It resolved that tension by applying the general definition of A.R.S. § 15-101(25). *Id.*

The tax court further reasoned that the Act was unconstitutional: "The only way to read § 15-972 in a manner consistent with the constitution, is to read it to include any tax subject to the 1% Limit in the calculation, regardless of the label applied by the in A.R.S. § 15-910(L)." APP-11–12. "Read in this manner, the tax levy for desegregation expenses must be included in the calculation of taxes subject to the 1% Limit under A.R.S. § 15-972(E) and 'shall be additional state aid for education,' which is paid by the State as provided in § 15-973(B)." APP-12.

The tax court rejected the State's contrary interpretation that the Act merely effectuates a budgetary decision not to fund desegregation expenses, holding that this construction would create "a fourth exemption to limitation to [sic] Article IX, Section 18 of the Arizona Constitution." APP-11.

The tax court putatively entered judgment on January 29, 2020. The State timely appealed on February 24. APP-260. The tax court's

judgment lacked the requisite Rule 54(c) language, however. That omission was corrected on April 10. APP-13.

This Court has jurisdiction. A.R.S. § 12-2101(A).

STATEMENT OF ISSUES

I. Did the tax court err in its interpretation of the Act and A.R.S. § 15-972(E) where it:

a. Failed to apply the canon against superfluidity;

b. Failed to apply the doctrine of constitutional avoidance;

c. Failed to attempt to sever aspects of the Act it thought unconstitutional;

d. Failed to apply the canon that specific provisions control over general ones;

e. Interpreted the Act contrary to its text;

f. Construed the Act inconsistent with its context; and

g. Adopted a construction that violates all relevant legislative history.

STANDARD OF REVIEW

This Court reviews issues of statutory interpretation and application de novo. *Stulce v. Salt River Project Agric. Improvement & Power Dist.*, 197 Ariz. 87, 89, ¶3 (App. 1999).

SUMMARY OF ARGUMENT

The tax court's interpretation remarkably violates several of the most fundamental canons of statutory construction simultaneously. In particular, it (1) read an *entire Act* to be a nullity, notwithstanding the presumption against rendering even *words or phrases* superfluous, and (2) it failed to apply the doctrine of constitutional avoidance even though a constitutional reading of the Act was readily available, instead gratuitously giving the Act a reading it wrongly believed was unconstitutional. In both cases, these venerable principles of statutory interpretation were prominently cited to the tax court. But it simply refused even to *acknowledge* them, let alone *attempt to apply* them. Its resulting interpretation is, perhaps unsurprisingly, flawed from top to bottom.

Although it refused to apply the presumption against surplusage and constitutional avoidance doctrine, the tax court did at least attempt

to analyze the actual text of the Act. It also correctly began its analysis by recognizing that the effect of the Act is to affix to desegregation expenses the "statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L)." APP-11. And it further recognized that state reimbursement is only available for *primary* taxes. APP-10. These premises should have resulted in judgment for the State.

But the tax court's analysis then went off the rails in two respects. It first refused to implement the Act as written because it viewed the Act as "unworkable." But, respectfully, the Act is remarkably simple in its intent, effect, and operation: Plaintiffs can no longer look to the State for reimbursement for desegregation expenses resulting from their prior violations of the Equal Protection Clause. Instead, Plaintiffs now largely bear the financial consequences of both (1) *their* operation of *de jure* segregated schools and (2) their astonishing failure to achieve unitary status/compliance in the subsequent four decades of efforts in which hundreds of millions of dollars were spent.

While legislators could debate the policy wisdom and fairness of that budgetary decision—which they did, vigorously and without the slightest doubt as to what the effect of the Act would be—that non-

funding decision is hardly impossibly unworkable for courts or ADOR to implement. Indeed, it requires nothing more than simple subtraction: going forward Plaintiffs will receive the same funding from the State under the same prior formula with *one simple change*: deducting out what they previously received for desegregation expenses. And if that simple effect were actually "unworkable" in its complexity, then Arizona is going to encounter impossible difficulties in implementing the multitude of far-more complex provisions that pervade the rest of its tax code.

Second, the tax court concluded that the Act violated our Constitution. In particular, it concluded that "desegregation expenses must be included in … 'additional state aid for education,' which is paid by the State as provided in § 15-973(B)." APP-12. The tax court reached that holding even though Plaintiffs have never argued that our Constitution actually compels the Legislature to fund its desegregation expenses. (To be sure, the tax court repeatedly *tried* to dragoon Plaintiffs into making an argument that the Legislature is constitutionally compelled to fund desegregation expenses. *See infra* at 39-40 & nn.3-4. But Plaintiffs never made that (meritless) argument.)

The tax court also remarkably made no effort to try to read the Act in a constitutional manner or sever aspects it found unconstitutional. Instead, it wrongly read the Act in a manner that it wrongly concluded was unconstitutional. That is reversible error as a constitutional reading is readily available: read the Act to implement a simple, statutory budgeting decision. So construed, there are no constitutional issues.

In addition, the text and remaining tools of statutory interpretation all uniformly favor the State's interpretation for four reasons. *First*, as the tax court correctly recognized, the effect of the text is to render taxes incurred for desegregation expenses to be "secondary" in nature. And A.R.S. § 15-972(E) unambiguously precludes reimbursement for such secondary expenditures. Moreover, additional textual support is found in (1) the repeated changing of references of "primary" to "secondary" or deletion of "primary" entirely, underscoring the Legislature's clear intent to end "primary" treatment, and (2) the Act's specific targeting of subsections (G)-(K)—part of the mechanisms that Plaintiffs could previously use to obtain state reimbursement.

Second, context supports the State's construction. The Act was passed as a *budget* bill, but only the State's interpretation gives the Act any actual *budgetary effect*. And the desegregation expenses at issue arise from the federal court litigation, (1) which is premised on constitutional violations by TUSD—not the State; (2) which astoundingly continues to this day, with TUSD unable or unwilling to come into compliance after four-plus decades of efforts in which hundreds of millions of dollars were expended; (3) in which the district court previously doubted TUSD's desire to bring the desegregation order to an end, and expressly observed its "previous reticence" in its "commit[ment] to bringing this [desegregation] case to a conclusion." *Fisher*, 329 F. Supp. 3d at 892; and (4) in which the district court chastised TUSD for wastefulness in much of the spending.

In that context, it makes perfect sense that the Legislature's patience finally ran out and it concluded that Plaintiffs needed the additional incentive of ending state subsidization through A.R.S. § 15-972(E), which might finally prod them to achieve unitary status before the desegregation order turns 50.

Third, the tax court's interpretation violates the canon that specific provisions control over more general ones. Here the Legislature's intention vis-a-vis desegregation expenses has been specifically expressed in the Act, and quite recently so. But the tax court wrongly permitted the older, more-general definition of A.R.S. § 15-101(25) to trump the newer, more-specific provisions of the Act. That is precisely backwards.

Fourth, the legislative history unequivocally supports the State. No one involved in the debate over the Act's passage seemingly harbored the slightest doubt as to what the intended effect of the Act was. Nor did Plaintiffs, with Pima County's own Administrator admitting the likely intended effect. Thus, even if Plaintiffs' arguments could establish ambiguity, the legislative history (as well as all other applicable canons) conclusively resolve the ambiguity in favor of the State's interpretation.

* * * * *

Ultimately, although aspects of this dispute are complex, the core of this case is quite simple: there is no genuine dispute that (1) the Legislature intended to make a budgetary decision in the form of ending

state subsidization of desegregation expenses, and (2) there is nothing inherently unconstitutional about such a budgetary effect. And only the State's construction gives the Act genuine effect and results in a constitutional construction.

The relevant question thus is not whether the State's interpretation of the text is the *best* one (although it happens to be). Instead, if the text of the Act can bear the State's construction at all, the applicable canons of construction compel its acceptance over Plaintiffs' and the tax court's. And it plainly can. This Court should accordingly reverse.

ARGUMENT

I. THE TAX COURT'S INTERPRETATION SQUARELY VIOLATES THE CANON AGAINST SUPERFLUOUS INTERPRETATIONS

The principal error committed by the tax court was in failing to give any effect to the Act. Indeed, that court did not even try to do so. That pivotal and patent error amply warrants reversal here.

A. A Fundamental Principle Of Statutory Interpretation Is To Avoid Rendering Words And Phrases Superfluous

Amongst canons of construction, few are more important or fundamental than the presumption against superfluidity. As the Supreme Court has repeatedly explained, "It is a 'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW*, 534 U.S. at 31 (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)) (collecting cases). This bedrock principle applies broadly: courts are "'reluctant to treat statutory terms as surplusage *in any setting*.'" *Id.* (citation omitted) (emphasis added).

There is no daylight between federal and Arizona state courts on this interpretive imperative. This Court, for example, has explained that it "'give[s] effect to each sentence and word so that provisions are not rendered meaningless.'" *Home Depot USA, Inc. v. ADOR*, 230 Ariz. 498, 501 ¶10 (App. 2012) (quoting *Powers v. Carpenter*, 203 Ariz. 116, 118 ¶9 (2002)). Arizona courts similarly "must give each word, phrase, clause and sentence meaning so that no part of the rule is rendered

superfluous, void, insignificant, redundant or contradictory." *Patterson v. Maricopa Cty. Sheriff's Office*, 177 Ariz. 153, 156 (App. 1993).

B. The Tax Court's Interpretation Patently Violates This Canon

The tax court's violation of this cardinal canon of statutory interpretation could hardly be more extreme: not content to render merely a "word, phrase, clause or sentence" superfluous, the tax court decided to render the *entire Act* a nullity. Under the tax court's interpretation, the Act has no effect whatsoever. It does not affect how a single tax dollar is raised or spent and does not affect the conduct of anyone in any manner. If the Act does anything except occupy space in the Arizona Revised Statute books, the tax court fails to identify that effect.

In adopting this interpretation under which the entire Act is surplusage, the tax court flouted this Court's "presum[ption] that the promulgating body did not intend to do a futile act by including a provision that is not operative or that is inert and trivial," *Patterson*, 177 Ariz. at 156, as well as its "presum[ption] that an amendment to a statute indicates the legislature's intent to make a change in existing

law." *Brodsky v. City of Phoenix Police Dep't Ret. Sys. Bd.*, 183 Ariz. 92, 95 (App. 1995).

Even more astonishing, the tax court *did not even try* to apply the canon against superfluidity here. APP-9–12 It would be one thing if the tax court acknowledged that canon, but found that other considerations outweighed its interpretive force. Instead, although the State prominently cited the canon repeatedly in briefs below, APP-130, APP-247, the tax court strangely refused even to acknowledge the *existence* of the canon against surplusage, let alone attempt to apply it.

This was elementary and fundamental error. Statutory interpretation that does not even attempt to give effect to all words/phrases/provisions is ultimately unserious. And if there is any method of reconciling the tax court's judgment with this "cardinal principle," the court steadfastly refused to provide it.

C. The Act Is Exceedingly Easy To Apply And Not At All "Unworkable"

Rather than engage in any effort to try to give the Act effect, the tax court's holding appears to rest on two premises: (1) that the Act is unconstitutional and (2) that it is "unworkable." APP-11–12. The first

reason fails for the reasons explained in Section II, *infra*. The second is also plainly without merit.

As explained in greater detail elsewhere, *supra* at 15-16, *infra* at 55-56, the intended effect of the Act was a mystery to no one: not the legislators who supported it, or the legislators who opposed it, or ADOR, or Plaintiffs themselves. As *everyone* seemingly understood, the purpose of the Act is to cease state reimbursement of desegregation expenses of school districts.

That unambiguous intent is not even particularly hard to effectuate, let alone "unworkable." It simply requires the State not to pay for desegregation expenses of school districts. Or, put slightly differently, the Act merely requires the State to calculate what it would have paid Plaintiffs under the prior law and deduct from that amount relevant desegregation expenses. That is simple subtraction, not an unworkably impossible task to carry out. And if the requirement of performing elementary arithmetic is sufficiently challenging as to render a statutory provision an "unworkable" nullity, it is difficult to understand how the State will be able to maintain a tax system at all,

which frequently is fraught with provisions with *far* greater complexity than single-operation arithmetic.

Much of the tax court's apparent difficulty appears to stem from the fact that the Legislature did not also amend other provisions. In particular, it reasoned that the State's interpretation improperly "attempts to isolate the amounts levied by one of the eligible jurisdiction (school districts) which are used for one particular purpose (complying with desegregation orders) into a different class, labeling them as 'secondary' tax, even though they do not fit the definition of that term under A.R.S. § 15-101(25)." APP-11. It thus appeared to view the tension between the new specific definition of A.R.S. § 15-910(L) and the generic definitions of A.R.S. § 15-101(25) as causing the Act to be "unworkable."

This too was elementary error. Indeed, this is far from the first time that courts have confronted tension between specific and general provisions. When they do so, courts do not simply throw up their hands and declare entire enactments "unworkable." Instead, "it is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384

(1992). This "canon has full application … [where] a general authorization and a more limited, specific authorization exist side-by-side. There the canon avoids not contradiction but the superfluity of a specific provision that is swallowed by the general one, 'violating the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.'" *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (cleaned up) (citation omitted). The canon has particular force when the more specific provision is newer. *See In re Estate of Winn*, 214 Ariz. 149, 152 ¶16 (2007) ("[W]hen there is conflict between two statutes, 'the *more recent, specific* statute governs over the *older, more general* statute.'" (citation omitted) (emphasis added)).

Thus, to the extent that there is any tension between the specific provisions of the Act—which address *in particular* how desegregation expenses are to be treated—and the general definitions of A.R.S. § 15-101, the Act's specific provisions control. For similar reasons, the tax court's focus on the fact that "A.R.S. § 15-972(E) was not amended," APP-11, is also misplaced. Section 972(E) is indisputably a more general provision and yields to the Legislature's intent vis-à-vis desegregation expenses, which is *specifically expressed* in the Act.

To be sure, the Legislature could have drafted the Act more artfully, and specifically amending A.R.S. § 15-101 and § 15-972(E) too would probably have been better practice. But imperfect draftsmanship is not an insurmountable barrier to implementing a statute and does not render it "unworkable." Indeed, the Social Security and Medicare Acts are notorious as some of the most convoluted and complex legislative draftsmanship ever to come out of Congress.[1] But that hardly means that the Federal Government has stopped sending social security checks or paying hospital bills. Instead, federal courts apply ordinary tools of statutory interpretation to construe those acts rather

[1] *See*, *e.g.*, *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981) ("The Social Security Act is among the *most intricate ever drafted* by Congress" and is "*almost unintelligible to the uninitiated*" (emphasis added)); *id.* at 43 n.14 (quoting favorably district court's description of "the Medicaid statute as 'an aggravated assault on the English language, resistant to attempts to understand it.'" (citation omitted)); *Methodist Hosp. of Sacramento v. Shalala*, 38 F.3d 1225, 1229 (D.C. Cir. 1994) ("[T]he court takes special note of the *tremendous complexity* of the Medicare statute." (emphasis added)); *Pennsylvania Med. Soc. v. Marconis*, 942 F.2d 842, 849 (3d Cir. 1991) ("The federal Medicare statute is an extraordinarily complex piece of legislation.").

than engaging in judicial nullification. The same result should obtain here.[2]

D. Plaintiffs' Alternative "Line Item" Disclosure Argument Fails

Unlike the tax court, Plaintiffs did address the presumption against surplusage and advanced an argument relevant to it. But that argument is unpersuasive and far-fetched, and does not provide an alternative ground for affirmance.

Specifically, TUSD argued below that while the Act does not affect state reimbursement of its desegregation expenses, "amounts budgeted for desegregation purposes must now … be a separate line item delineated as a secondary tax on property owners' tax bills." APP-240–

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[2] The tax court's "unworkability" holding may have been influenced by that court's policy preferences, which were not particularly well-hidden. The tax court stated that it "just *seems so offensive to me* that -- that the State can say, we don't have to -- we don't -- we can get in the way of -- of desegregating our schools pursuant to a court order." APP-50 (emphasis added). It further asked if the Legislature could "sa[y] [they] don't like *Brown v. Board of Education*? We want – we want to have segregated schools"? APP-49. The court also suggested that the Act caused the court to "go home mad about" the case. APP-51. Finally, the tax court repeatedly—but unsuccessfully—urged Plaintiffs to bring broader constitutional challenges to the Act. *See infra* at 39-40 & nn.3-4.

41. Thus, in TUSD's view, "New subsection 910L clearly effects a change." APP-240.

This argument does have the virtue of giving *some* effect to the Act. But that is its only virtue, and it violates a litany of other canons/considerations. This "notice-only" construction accordingly fails for at least four reasons.

First, Plaintiffs' construction violates the canon of construing statutory provisions in context. *See infra* at 53-55. The Act was passed as part of a *budget* act. But under Plaintiffs' reading, the Act has *no* budgetary effect and instead merely affects *disclosures* given to taxpayers. But the context strongly suggests that the Legislature intended to effect a *budgetary* change, not merely one of disclosure.

Second, and for similar reasons, Plaintiffs' construction would likely be unconstitutional. Our constitution prohibits inclusion of provisions unrelated to the budget in budget bills, Ariz. Const. art. IV, Pt. 2, § 20, thereby diminishing logrolling and avoiding the "Omnibus," "CRomnibus," and "Minibus" bills of federal lore. Because Plaintiffs' interpretation robs the Act of *any* budgetary effect, it is doubtful that such a reading could pass constitutional muster. *See*, *e.g.*, *Litchfield*

Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt, 125 Ariz. 215, 225 (App. 1980). And this Court has a well-established duty to *avoid* giving statutory provisions constructions that invite constitutional doubt if at all possible. *See infra* at 45-48. And this Court can do so easily by merely reading a budget bill to be a budget bill.

Third, Plaintiffs' interpretation only gives effect to the second sentence of subsection (L), which distinctly requires secondary desegregation expenses "be separately delineated on a property owner's property tax statement." A.R.S. § 15-910(L). The rest of the subsection—*i.e.*, all 91 words of the first sentence—continue to be a nullity/surplusage under Plaintiffs' disclosure-only interpretation.

Fourth, there is not a scintilla of legislative history or other indicia of intent supporting Plaintiffs' line-item-disclosure theory. There is simply no evidence that the Legislature was motivated by concerns about how the taxes for TUSD's desegregation expenses were being disclosed. In contrast, there is ample evidence that legislators were concerned with *who was paying* those expenses. *Supra* at 15-16. By all indications, Plaintiffs' disclosure theory is simply a convenient

post hoc invention and there is not the slightest indication that it is what the Legislature actually intended.

II. THE ACT DOES NOT VIOLATE OUR CONSTITUTION

The tax court's judgment also appears to rest on a conclusion that the Act violates the Arizona constitution. That conclusion rests on legal error, including complete failures (1) to apply the canon/doctrine of constitutional avoidance and (2) to attempt to sever aspects that the tax court found unconstitutional.

A. There Is Nothing Unconstitutional About The Act's Intended Effect

It is common ground between the parties as to what the Legislature intended in the Act. Pima County's own Administrator C.H. Huckelberry admitted that the Act "appears to have been an attempt to place the burden of the desegregation taxes on residential property owners within the district [and] to eliminate most of the Additional State Aid to Education that has been paid by the state." APP-257. Mr. Huckelberry is correct: that is precisely what the Legislature intended.

The parties dispute, however, whether the Legislature's implementation of that intent is constitutional. Thus, before turning to the Legislature's *methods*, it is first worth addressing its *ends*.

There is no dispute that the Legislature has the power of the purse. It thus may, by statute passed by simple majorities, exercise that power by funding—or *not funding*—items. The Legislature is under no constitutional command to fund TUSD's desegregation expenditures. Indeed, for about the first five years of the consent order binding TUSD (1978-83), the Legislature did not. *See supra* at 12.

The tax court repeatedly appeared to entreat Plaintiffs to contend that state funding of TUSD's interminable desegregation efforts is mandatory.[3] That court appeared to suggest that such state funding

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[3] The tax court, for example, (1) asked Plaintiffs "why is an argument not being made that the -- that (l) violates Article 9, Section 18?," APP-39, (2) stated "this is why I don't understand why there's no constitutional argument here. Once they -- once they decide to pay state aid, can they use that as a sword to say -- you know, we're not going to fund mandated efforts to end segregation?", APP-49, (3) explained "this is where I'm surprised there's not a constitutional argument being made here. I -- that just seems so offensive to me that -- that the State can say, we don't have to -- we don't -- we can get in the way of -- of desegregating our schools pursuant to a court order," APP-50, and (4) referenced "all the frustration I might have about that, there's not a constitutional argument being raised here," APP-51, and

was compelled either by the Equal Protection Clause of the Fourteenth Amendment or the "General and Uniform" Public Education Clause of our Constitution.[4] But Plaintiffs refused to take the bait, steadfastly refusing to amend their complaint to add such claims or advance such arguments in their briefs.

This case thus comes to this Court in the posture that the ends intended by the Legislature were capable of being constitutionally effectuated—*i.e.*, the Legislature has the constitutional power not to fund TUSD's to-date unending desegregation expenses.

The issue presented is thus only whether the Act constitutionally exercised that power. This has important implications because: (1) this Court is obliged to interpret the Act to be constitutional if at all possible (which can easily be done by simply reading the budget bill as implementing a budgetary decision), and (2) even if portions of the Act

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(5) asked Plaintiffs "how is the system that is currently in place after this change consistent with the constitution," APP-71.

[4] *Supra* at 39-40 n.3; APP-50 ("If it's the State's obligation to provide adequate and equal schooling, if the State said we're—we aren't—we aren't paying for anything that would implement a segregation—desegregation order help achieve the end of segregated schools, that would be okay?").

are somehow unconstitutional, this Court can and must sever the budgetary aspects and give them effect.

B. The Act Does Not Amend Our Constitution By Mere Statute

The tax court appeared to hold that the Act was unconstitutional because, in the court's view, it impermissibly attempted to "trump" or amend the Arizona Constitution. The tax court thus reasoned that "[t]he statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L) cannot trump the constitutional limitation on *ad valorem taxes* found in Ariz. Const. art. 9, § 18." APP-11.

The Act, however, does no such thing. Notably, Article IX, Section 18 of our constitution does not use the terms "primary" or "secondary" taxes *at all*. Ariz. Const. art. IX, § 18. Instead, those are *purely* statutory terms created by the Legislature that address (1) independent restrictions on taxation by local governments and (2) the expenditure of state moneys to reimburse local governments. *See*, *e.g.*, A.R.S. §§ 15-910, 972. And while the statutory definitions of "primary" and "secondary" taxes generally mirror the categories of Article IX, Section 18, there is no constitutional mandate that they do so. Instead, the Legislature is free to alter the meaning of its own statutory terms as it

sees fit. What the Legislature creates by statute it may amend or end by statute.

The Act thus does not "trump … art. 9, § 18." APP-11. That provision remains entirely intact and retains undiminished effect. Instead, the Legislature merely changed the *statutory* treatment of excess desegregation expenditures and taxes used to fund them. In a nutshell: they can no longer be funded by primary taxes and thus cannot be reimbursed by the State under A.R.S. § 15-972(E). If Plaintiffs wish to continue to expend vast sums in service of TUSD's ongoing failure to achieve full unitary status—as they have now done for 42 years and counting—they may do so. They simply must do so with their own money in the form of either (1) taxes that fall within the One-Percent Limitation or (2) taxes approved by its voters in an override election—*i.e.*, on their own dime. That result is neither unconstitutional nor unworkable.

The tax court was similarly mistaken when it reasoned: "Since the 'secondary property tax' levy for desegregation expenses is not a voter-approved *ad valorem* tax, [(1)] it is still subject to the constitutional 1% Limit and [(2)] must be included in the calculation under A.R.S. § 15-

972(E)." APP-11.[5] The first premise is correct: the requirements of the One-Percent Limitation continue in full force, undiminished by the Act. But the second premise does not flow from the first: the Legislature is free to define what it wants to spend state funds on (and what it does not), both in section 15-972(E) and elsewhere. Thus, even if an expenditure is subject to the One-Percent Limitation, the Legislature is free not to fund/reimburse local governments for those moneys. Put simply, Article IX, Section 18 is a negative limitation on taxing/spending by local governments; it is not an affirmative guarantee of unlimited state funding for local spending.

Finally, the tax court was mistaken when it rationalized that under the State's interpretation "a fourth exemption to limitation to [sic] Article IX, Section 18 of the Arizona Constitution, would be statutorily created." APP-11. Not so. TUSD and Pima County still

[5] This mirrors Plaintiffs' argument below: *i.e.*, that if desegregation expenses are subject to the One-Percent Limitation, they *must* be reimbursed by the State. *See*, *e.g.*, APP-88 ¶13 ("The 910(G) levy is an ad valorem tax subject to the 1% constitutional limitation, and therefore must be included in the calculation of any Subsection E Tax Reduction and the corresponding Subsection E Levy Reduction and Subsection E Additional State Aid."); APP-89 ¶20(a).

may not exceed the One-Percent Limitation without satisfying one of the three exceptions enumerated by our Constitution.

While the Act removes any *statutory* requirement for Plaintiffs to obtain voter approval due to exceeding statutory revenue control limits, the constitutional requirements of the One-Percent Limitation remain. Thus, if TUSD and Pima County feel strongly about continuing to maintain expenditures at their current levels (*i.e.*, such that total expenditures are in excess of the One-Percent Limitation), they are welcome to seek the approval of their voters in an override election and thus fall within the One-Percent Limitation's third exception.

Moreover, it is doubtful that the tax court even had jurisdiction to reach such a dubious holding. Even if the Act somehow did authorize Plaintiffs to levy taxes in excess of the One-Percent Limitation, it would *enhance* their authority rather than cause them injury. And Plaintiffs would not have standing to assert that the Act unconstitutionally *expands* their authority. Instead, standing requires *injury*, not granting new benefits/powers.

For all of these reasons, the tax court wrongly held that the State's interpretation of the Act violates our Constitution. But even if

the tax court's reasoning had some merit, that would only render the Act ambiguous. And, as explained next, this Court would need to resolve that ambiguity by reading the Act to be constitutional (*i.e.*, accepting the State's interpretation).

C. The Tax Court Failed To Apply Avoidance Doctrine

For all of the reasons identified above, the Act is *at best* ambiguous for Plaintiffs. Even assuming such ambiguity exists, this Court's resolution of it is straightforward: where one interpretation would render a statute constitutionally doubtful or outright unconstitutional (*i.e.*, Plaintiffs') and another is constitutional (*i.e.*, the State's), courts are obliged to adopt the constitutional interpretation. Here constitutional avoidance doctrine further requires reversal.

Another one of the most fundamental canons of statutory interpretation is constitutional avoidance. Under avoidance doctrine, it has long been established that "'[n]o court ought, unless the terms of an act rendered it unavoidable, to give a construction to it which should involve a violation, however unintentional, of the constitution.'" *Parsons v. Bedford, Breedlove & Robeson,* 28 U.S. 433, 448-49 (1830). Therefore, "It is ... incumbent upon [courts] to read the statute to

eliminate those [constitutional] doubts so long as such a reading is not plainly contrary to the intent of [the enacting legislature]." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78 (1994); *accord Larsen v. Nissan Motor Corp.*, 194 Ariz. 142, 147 ¶13 (App. 1998). This Court has accordingly held that "[t]he party alleging the constitutional violation bears the burden of proof, and '[it] will declare legislation unconstitutional only if we are *clearly convinced* that it conflicts with the Arizona or United States Constitution.'" *Arpaio v. Maricopa Cty. Bd. of Supervisors*, 225 Ariz. 358, 364 ¶23 (App. 2010) (emphasis added) (cleaned up) (citation omitted).

Here, assuming Plaintiffs' arguments have any merit at all, the Act is at best ambiguous. And there is a clear way to read the Act to be constitutional: simply read it to be implementing a budgetary decision to cease the pertinent state funding of TUSD desegregation efforts. So construed, the Act is plainly constitutional. *See supra* Section II.A.

Plaintiffs' argument, which the tax court accepted, turns constitutional avoidance on its head. Plaintiffs advance a dubious interpretation of the Act precisely so that the statute would be subject

to invalidation. That gratuitous constitutional conflict is precisely what the tax court was supposed to avoid.

But once again, the tax court did not genuinely even try to apply this venerable canon. Instead, it reasoned that *"[t]he only way to read § 15-972* in a manner consistent with the constitution, is to read it to include any tax subject to the 1% Limit in the calculation, regardless of the label applied by the in [sic] A.R.S. § 15-910(L) … [and therefore] … 'shall be additional state aid for education,' which is paid by the State as provided in § 15-973(B)." APP-12 (emphasis added). But this is simply wrong: because there is no constitutional mandate that the State reimburse Plaintiffs for their desegregation expenses, *supra* Section II.A., a reading that denies reimbursement to Plaintiffs is perfectly consistent with our Constitution. A non-reimbursement construction need not be the best reading of the Act in tandem with § 15-972 (although it happens to be), but it is a perfectly constitutional one.

The tax court's reasoning thus rests on the erroneous premise—which even Plaintiffs tellingly are unwilling to make—that the State is constitutionally compelled to fund TUSD's desegregation efforts. It is not. But that is the primary basis for the tax court's conclusion that the

Act and Section 972(E) must be read to compel reimbursement by the State. The tax court's reasoning thus cannot survive scrutiny.

Ultimately, if it is possible to read the Act as implementing a constitutional budgetary decision, this Court is obliged to do so. And because the Act is plainly susceptible to such a construction, the doctrine of constitutional avoidance requires adopting it. The tax court's contrary decision should accordingly be reversed.

D. Even If Any Aspect Of The Act Is Unconstitutional, Its Budgetary Effect Is Severable

Even if *some* aspects of the Act were unconstitutional, the budgetary aspect—which is the entire controversy here—is entirely severable and should be given effect. The State is thus entitled to judgment even if other aspects of the Act raise constitutional issues.

"Generally speaking, when confronting a constitutional flaw in a statute, [courts] try to limit the solution to the problem. [Courts] prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328-29 (2006). Thus, the Arizona Supreme Court has explained that it "on numerous occasions has held that if part of an act is unconstitutional and by eliminating the

unconstitutional portion the balance of the act is workable, only that part which is objectionable will be eliminated and the balance left intact." *Randolph v. Groscost*, 195 Ariz. 423, 427 ¶13 (1999).

Here, it is not genuinely disputed that a standalone decision by the Legislature to cease reimbursing Plaintiffs for desegregation expenses beyond the One Percent Limitation would pass constitutional muster. *Supra* Section II.A. And to the extent that the Act takes other actions that might violate our Constitution, those other aspects should be severed and the budgetary aspect be given effect.

Thus, even if the tax court were correct that the Act created a "fourth exception" to the One-Percent Limitation and thereby allowed local governments to impose unconstitutional taxes, APP-11–12, that aspect of the Act should be severed from the budgetary aspect and the latter "left intact." *Randolph*, 195 Ariz. at 427 ¶13.

Severance is particularly appropriate here as ultimately "'severability is a question of legislative intent.'" *State v. Pandeli*, 215 Ariz. 514, 530 ¶62 (2007) (cleaned up) (quoting *State v. Watson*, 120 Ariz. 441, 445 (1978)). Here, the legislative intent to cease state funding is overwhelming. *Supra* at 15-16; *infra* at 55-56. *At best for*

Plaintiffs, the Legislature did not effectuate that clear intent through the most artful draftsmanship and created constitutional issues in implementing that intent. But even if that is so, this Court should heed the Legislature's intent and give effect to its core intent, which is the constitutional desire to cease the relevant state funding of TUSD's desegregation efforts. That budgetary decision is cleanly severable from the rest of the Act and is precisely what the Legislature intended.

III. APPLICATION OF OTHER APPLICABLE TOOLS OF STATUTORY INTERPRETATION SIMILARLY REQUIRE REVERSAL.

The State's interpretation is further supported by the text of the Act, its context, and its legislative history.

A. The Text Of The Act Favors The State

The Act's actual text supports the State's interpretation. Although the Legislature admittedly could have been more straightforward in the text about the Act's intended effect, the text effectively demonstrates the Legislature's intent vis-à-vis this dispute: *i.e.*, it intended not to reimburse Plaintiffs for the relevant desegregation expenses.

The centerpiece of the Act is the new subsection (L). And a clear import of that subsection is to change the characterization of taxes used to fund desegregation expenses from "primary" to "secondary" taxes.

As an initial matter, there can be no doubt that the target of subsection (L) is desegregation expenses. *See* A.R.S. § 15-910(L) (referring expressly to "expenses of complying with or continuing to implement activities that were required or allowed by a court order of desegregation or administrative agreement with the United States department of education office for civil rights directed toward remediating alleged or proven racial discrimination"). The Act further provides "subsections G through K"—*i.e.*, the only essential mechanisms under which Plaintiffs might otherwise seek reimbursement for the amount in controversy—"apply only if the governing board uses revenues from secondary property taxes." *Id.* The Act thus precludes state reimbursement to Plaintiffs by denying them the ability to use primary taxes under A.R.S. § 15-910 in a manner that could be reimbursable.

Once the inability of Plaintiffs to use "primary" taxes/expenditures at issue is established, the lack of opportunity for state reimbursement

flows naturally and inexorably from A.R.S. § 15-972(E)—since that provision makes "additional state aid for education" available for *primary* taxes/spending.

Notably, the tax court *agreed* that this was the intent of the Act, recognizing the "statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L)." APP-11. That court thus accepted the State's reading of the text of the Act on this critical issue. The tax court only refused to implement the Act as written because, in its view, doing so would "trump the constitutional limitation on ad valorem taxes found in Ariz. Const. art. 9, § 18." APP-11. As explained above, however, that constitutional holding is both erroneous and gratuitous. *See supra* Section II.

The State's interpretation of the Act's text is further confirmed by the Legislature's repeated striking references to "primary" taxes, and frequently substituting the word "secondary"—doing so four times in all. APP-179–79. These changes further demonstrate the Legislature's palpable—indeed almost reflexive—hostility to any further treatment of levies for desegregation expenses as "primary" taxes.

B. The Tax Court Failed To Consider The Act's Context

The State's interpretation is further strongly supported by the statutory context. That is critical as "[t]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000). The canon of reading statutes in context is powerful. For example, the Supreme Court had little doubt that nicotine was obviously a "drug" under the literal definition of the Federal Food, Drug, and Cosmetic Act, and thus within the FDA's regulatory power; but the Court nonetheless concluded that when read in context, "it [wa]s plain that Congress has not given the FDA the authority" to regulate nicotine as a "drug." *Id.* at 161.

The statutory context here supports the State for two reasons. *First*, the Act was expressly passed as a budget bill. Only the State's interpretation gives it any budgetary effect, however, and it is thus the only reading consistent with the budgetary context.

Second, the context surrounding the federal litigation gives ample evidence that the Legislature's patience with Plaintiffs may have run

out—particularly as TUSD's seemingly endless efforts were heavily subsidized by the State.

The desegregation order was four decades old when the Legislature passed the Act, and 35 years had passed in which the State had underwritten large portions of TUSD's desegregation efforts. *Supra* at 12-13. Moreover, as part of its 2018 order, the district court "detected a change in attitude" from TUSD's "previous reticence" in its "commit[ment] to bringing this [desegregation] case to a conclusion." *Fisher*, 329 F. Supp. 3d at 892.

Given these circumstances, the Legislature exhausting its patience with TUSD is likely (which the legislative history confirms). Furthermore, the context makes clear that the Act's intended purpose serves fairness interests, with purely local spending supported by local taxes. Moreover, the Legislature might rightfully have suspected that TUSD was insufficiently incentivized to bring the desegregation order to a close as long as the State was subsidizing the expenses (which is notably underscored by the district court's "previous reticence" finding). But with Plaintiffs now paying full-freight, perhaps TUSD can finally

achieve unitary status before the desegregation order reaches its half-century golden jubilee.

C. The Legislative History Unequivocally Supports The State

Finally, the legislative history unequivocally supports the State. Plaintiffs' arguments *at best* create only ambiguity and thereby open the door to consideration of legislative history. *Bell v. Indus. Com'n of Arizona*, 236 Ariz. 478, 480 ¶7 (2015). And that history is indisputably hostile to Plaintiffs' claims.

As set forth above, *no one* in the Legislature appears to have harbored the slightest doubt as to what the intent of the Act was. The Act's supporters thought that the Act would stop state funding for Plaintiffs' desegregation expenses, and *so did the Act's opponents*. *Supra* at 15-16. And Plaintiffs themselves demonstrated their own contemporaneous awareness of what the precise intent of the Act was, with Pima County Administrator Huckelberry announcing that the Act "appears to have been an attempt to place the burden of the desegregation taxes on residential property owners within the district [and] to eliminate most of the Additional State Aid to Education that has been paid by the state." APP-257.

At best for Plaintiffs', the Act's text is an imperfect implementation of the clear intent of the legislators that supported the Act. But ambiguity alone cannot save Plaintiffs, since the legislative intent makes perfectly clear how the Act should be read in the event it is found ambiguous. Indeed, *all* of the relevant canons for resolving ambiguity here—*i.e.*, the presumption against surplusage, constitutional avoidance, reading in context, specific controlling over the general, and legislative history—tip *sharply* in favor of the State. Plaintiffs' could thus only prevail if the Act's text *unambiguously* supported their position. But not even the tax court thought that was the case.[6]

Because the text of the Act and all relevant canons of construction favor the State's interpretation, the tax court's judgment is untenable and must be reversed.

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[6] Its opinion notably never uses the terms "ambiguous," "unambiguous," or "ambiguity." APP-9–12.

CONCLUSION

For the foregoing reasons, this Court should vacate the tax court's judgment and remand with instructions to enter judgment in favor of the State.

RESPECTFULLY SUBMITTED this 29th day of July, 2020.

MARK BRNOVICH
Arizona Attorney General

/s/ *Drew C. Ensign*
Drew C. Ensign
Deputy Solicitor General
Robert J. Makar
Assistant Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
drew.ensign@azag.gov

Attorneys for the State of Arizona

Lisa Neuville
Jerry A. Fries
Assistant Attorneys General

Attorneys for the Arizona Department of Revenue

Kevin D. Ray
Assistant Attorney General

Attorneys for the Arizona State Board of Education and the Arizona Superintendent of Public Instruction