SUPREME COURT OF ARIZONA

ARIZONA SCHOOL BOARDS ASSOCIATION, INC., et al., Plaintiffs/Appellees, v. STATE OF ARIZONA, a body politic, Defendant/Appellant.	Arizona Supreme Court No. CV-21-0234-T/AP Court of Appeals, Division One No. 1 CA-CV 21-0555 Maricopa County Superior Court No. CV2021-012741-00063

APPELLANT'S OPENING BRIEF

FENNEMORE CRAIG, P.C.
Patrick Irvine (No. 006534)
Lyndsey M. Maasch (No. 035548)
2394 E. Camelback Road Suite 600
Phoenix, Arizona 85016
Telephone: (602) 916-5000
Email: pirvine@fennemorelaw.com

MARK BRNOVICH
ATTORNEY GENERAL
(Firm State Bar No. 1400)
Joseph A. Kanefield (No. 15838)
Brunn W. Roysden III (No. 28698)
Michael S. Catlett (No. 025238)
Office of the Attorney General
2005 N. Central Avenue
Phoenix, Arizona 85004
Telephone: (602) 542-8958
Email: Beau.Roysden@azag.gov
Email: Michael.Catlett@azag.gov
Email: ACL@asag.gov

Attorneys for Defendant/Appellant State of Arizona

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INTRODUCTION

The Arizona Constitution provides that "[t]he general appropriation bill shall embrace nothing but appropriations." Ariz. Const. art. IV, pt. 2, § 20. The Arizona Constitution also provides that every act must "embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Ariz. Const. art. IV, pt. 2, § 13. To abide by those restrictions, the Legislature has historically placed monetary appropriations into a general appropriation (or "feed") bill and substantive amendments associated with the budget into separate reconciliation bills centered around specific subject matters. Prior to 2004, the Legislature placed substantive budget amendments into three "omnibus reconciliation bills" (or "ORBs") pertaining to (1) public finance, (2) education, and (3) health and welfare. Starting in 2004, based on comments this Court made in dicta, the Legislature began placing substantive budget amendments into a series of between eight and ten budget reconciliation bills ("BRBs").[1] This year was no different. On June 30, 2021, the Legislature approved, and the Governor signed, eight BRBs to carry out the fiscal 2022 feed bill.

[1] For additional information about the history of the Legislature's use of BRBs, *see* the Brief of *Amici Curiae* Arizona House Speaker Russell Bowers, Arizona Senate President Karen Fann, and Governor Douglas A. Ducey filed with the trial court on September 10, 2021.

Plaintiffs claim that the BRBs for kindergarten through grade twelve (HB2898), higher education (SB1825), and health (SB1824) violate the Arizona Constitution's title requirement. Plaintiffs claim that the state budget procedures BRB (SB1819) violates the Arizona Constitution's title and single subject requirements. Plaintiffs further claim that a portion of HB2898, imposing a ban on mask mandates in public and charter schools, violates the Arizona Constitution's Equal Protection Clause.

The trial court concluded that each of the challenged provisions violated the title requirement and that SB1819 violated the title and single subject rule (the "Ruling"). In so doing, the trial court nullified at least 58 provisions of state law scheduled to go into effect just two days later, on September 29, 2021.

The State of Arizona (the "State") now appeals from the Ruling because the trial court made several errors of law. The trial court concluded that: (1) Plaintiffs have standing to challenge SB1819; (2) the political question doctrine is not applicable; (3) the challenged bills, or portions thereof, violate Section 13's title requirement; (4) SB1819 violates the single subject rule of Sections 13 and 20; (5) SB1819 was unconstitutional in its entirety; and (6) its Ruling applied to the challenged bills, rather than applying prospectively only. For the reasons explained herein, this Court should reverse and direct entry of judgment for the State.

ARGUMENT

Interpretation of constitutional and statutory provisions are issues of law that are reviewed de novo. *See Ross v. Bennett*, 228 Ariz. 174, 176 (2011).

I. JUSTICIABILITY.

A. Plaintiffs Lack Standing to Challenge SB1819.

To establish standing, a party must allege a "distinct and palpable injury." *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005). "An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing." *Sears v. Hull*, 192 Ariz. 65, 69 (1998) (citing *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). To have standing to challenge the constitutionality of legislation, Plaintiffs "must show that *they* have been injured by the alleged … violation." *Id.* at 71 (emphasis added); *see also Town of Wickenburg v. State*, 115 Ariz. 465, 469 (App. 1977) ("As a general rule, one party cannot challenge the constitutionality of a statute by asserting that it offends the constitutional rights of another.").

This Court has required Plaintiffs to satisfy standing requirements even when the dispute involves BRBs. *Bennett v. Napolitano*, 206 Ariz. 520 (2003). The court stated in that case: "[O]ur standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken

by one of the other two branches of the … Government was unconstitutional." *Id*. at 525, ¶ 20 (quoting *Raines v. Byrd*, 521 U.S. 811, 819–20 (1997)).

Plaintiffs challenge six provisions of SB1819, but they have not shown direct harm to themselves from any of those provisions. The challenged sections address the allocation of state resources for several election issues and a provision restricting cities, towns, and counties from expending funds to adopt or enforce ordinances related to COVID-19. None of them is directed at any of the Plaintiffs, and Plaintiffs have not alleged more than a "generalized harm that is shared alike by all," which is insufficient. *Sears*, 192 Ariz. at 69. Nothing in the Declaratory Judgment Act excuses the standing requirement. Plaintiffs have failed to demonstrate a causal nexus between SB1819 or any individual provision thereof and any specific injury to themselves, and therefore lack standing to challenge SB1819 as a whole or any of its individual provisions.[2]

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

Courts should refuse to question whether a budget bill, or individual

[2] The trial court's citation to *American Life Ins. Co. v. State Dept. of Ins*., 116 Ariz. 240 (App. 1977), as part of its standing analysis, Ruling 4, shows it misapplication of the requirement. In that case the plaintiffs were directly affected by a new tax imposed by the challenged legislation. Standing was not an issue.

provisions therein, is sufficiently related to the budget or sufficiently tied to general appropriations. Plaintiffs would have the courts, for the first time, superintend the State budget process by determining after the fact whether provisions contained in BRBs are necessary to implement the budget. Not only is there no textual basis for Plaintiffs' proposed restrictions on the budget process, there are strong prudential reasons why the judicial power does not extend to determining whether budgetary measures are sufficiently related or tied to budgeting, thereby rendering it an unreviewable political question.

"'Political questions,' broadly defined, 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 Legislature of State v. Napolitano*, 213 Ariz. 482, 485, ¶ 7 (2006) (citation omitted); *Brewer v. Burns,* 222 Ariz. 234, 239, ¶ 21 (2009) (internal citation omitted) (questions involving "whether the Legislature should include particular items in a budget or enact particular legislation … clearly are political questions"). It is well-established that "courts will not consider political matters." *Adams v. Bolin*, 74 Ariz. 269, 285 (1952).

Here, each of the challenged provisions address the operations of the state and various political subdivisions governed by state law, and often substantially funded

by appropriated funds. In making appropriations, the Legislature frequently ties funding to substantive rules. There is no requirement that ties between funding and substantive rules be directly referenced in the law, and certainly no requirement that each BRB provision be linked to a line item in the budget. The Legislature is given discretion in this area. Setting the budget and deciding what is necessary to implement it are uniquely legislative functions, and as such there are no judicially manageable standards through which the Court could superintend the budgeting process. *See Burns*, 222 Ariz. at 239, ¶ 21.[3]

Whether an act of the Legislature complies with the title and single subject requirement is a different inquiry (addressed in detail below), which requires only a determination of the subject of the title of an act and whether each of the provisions contained therein is germane to that subject. *See State v. Harold*, 74 Ariz. 210, 214-15 (1952) ("[A] provision in the act which directly or indirectly relates to the subject of the title and having a natural connection therewith is properly included in the body of the act … or if it is germane to the subject expressed in the title, it is constitutional."). In other words, what subject is embraced in the title of a BRB and

[3] A useful analogy is to the emergency clause provisions of the Arizona Constitution. This Court has held that whether an emergency clause was "necessary for the preservation of the public peace, health, and safety", was for the Legislature to judge. *Orme v. Salt River Valley Water Ass'n*, 25 Ariz. 324, 346-47 (1923).

are the provisions contained therein germane to that subject? Although that question is justiciable, the different question of whether a BRB and each of its constituent parts are necessary to implement the budget or sufficiently tied to an appropriations bill has never been subject to judicial challenge because those issues are the exclusive prerogative of the Legislature. This Court, as in *Burns*, should reject Plaintiffs' invitation to further involve the courts in the legislative budgeting process.

II. EACH OF THE CHALLENGED BILLS IS CONSTITUTIONAL.

Each of the challenged bills satisfies the title requirement and SB1819 also satisfies the single subject rule.

A. The Challenged Bills Satisfy the Title Requirement.

With regard to Section 13 challenges, Arizona courts,

> have uniformly held that [the nature and purpose of title requirement] was to prevent the inclusion of subjects in an act which might not reasonably be expected to be found therein under the title; that it would be given a liberal construction and not a narrow and constrained one for the purpose of nullifying legislation, and that it did not need to be a synopsis or complete index of the subjects found in the act, but that any provision directly or indirectly relating to the subject expressed in the title, having a natural connection with and not being foreign thereto, was proper.

State ex rel. Conway v. Versluis, 58 Ariz. 368, 377 (1941) (citations omitted); *see also In re Lewkowitz*, 70 Ariz. 325, 329 (1950) (title is "*to put anyone having an*

interest in the subject matter on inquiry") (citation omitted).

No Arizona court has ever held that the individual provisions within a bill need to relate to each other; rather, each provision of a bill need only be germane to the subject contained in the title of the bill, even where the title is broad. Each provision of an act need only relate directly or indirectly to the subject of the title and have a "natural connection therewith." *Harold*, 74 Ariz. at 214 (citing *Taylor v. Frohmiller*, 52 Ariz. 211 (1938)).

Here, there is no dispute that the title of each of the challenged bills includes the names of each statute amended in the bill. Three of the bills specifically pair the phrase "budget reconciliation" with a specific subject: "Kindergarten through Grade Twelve," "Higher Education," and "Health." The fourth bill refers only to "Budget Procedures," but its short title also includes "budget reconciliation," indicating that the Legislature plainly intended it to also be a budget reconciliation bill. In each case, Plaintiffs' claim can only succeed if the challenged provisions have no direct or indirect relation to the subject listed in the title, i.e. the "one general subject" or "one general idea" of the bill's named subjects: K-12, Higher Education, Health or Budget Procedures. Each challenged provision meets that standard.

Plaintiffs admit that budget reconciliation bills are an ordinary and necessary part of the legislative process because "it is often necessary to make statutory and

session law changes to effectuate the budget." Mot. 5 (citing a Senate fact sheet). Plaintiffs go too far, however, when they essentially argue that every provision in the bill must be tied to a line item of a general appropriation bill. *Id.* The Constitution does not impose such a narrow restriction.

Budget reconciliation bills have been used by the Legislature for decades. They are not, however, without controversy. *See Bennett*, 206 Ariz. at 520. Consequently, if anything, the phrase "budget reconciliation" does not act to narrow or particularize the subject of the bill, but should put legislators and the public on notice that the bill's contents could be broad, although limited to the topic usually paired with the term "budget reconciliation"—in this case, K-12, Higher Education, Health and Budget Procedures.

The State budget funds education, health, and many other activities, and the Legislature must have broad discretion in regulating how those funds are to be spent, or not spent. As discussed above, what is necessary to include in a budget reconciliation bill is a political question that courts should not address. In any event, putting aside Plaintiffs' narrow definitions, each of the challenged provisions fit within the subject of its title, as explained in detail in the State's Response to Application for a Preliminary Injunction, filed Sept. 2, 2021 ("Resp.").

A title need not be a synopsis or complete index of an act, and any provision

directly or indirectly relating to the subject is proper. Applying that test, the challenged provisions of all the bills are valid.

B. SB1819 Satisfies the Single Subject Rule of Sections 13 and 20.

Plaintiffs' challenge to SB1819 under the single subject rule of Sections 13 and 20 also fails. Again, a single subject challenge fails unless a provision of a bill does not relate to the subject reflected in the title of the bill; the subject of the provision need not relate to the subject of every other provision of a bill. Thus, while SB1819 includes fifty-two sections, that does not mean it addresses more than the single subject included in its title: budget procedures. Each of the provisions of the bill embrace the "one general subject" and "one general idea" of "budget procedures." The fact that each section on its own might also be described as addressing another topic, such as election law or health policy, does not preclude them from also fitting within the "budget procedures" title. Therefore, SB1819 does not violate the single subject rule.

C. HB2898 Does Not Violate Arizona's Equal Protection Clause Under Article II, Section 13 of the Arizona Constitution.[4]

Although not addressed by the trial court, Plaintiffs also argued below that the ban on mask mandates in public and charter schools encompassed in HB2898

[4] The Superior Court's Ruling denied this issue as moot. Appellant includes this to avoid waiver and for the Court to reach the issue if it deems appropriate.

violates the equal protection clause of Article II, Section 13 of the Arizona Constitution, which provides that "[n]o law shall be enacted granting to any citizen, class of citizens, or corporation … which, upon the same terms, shall not equally belong to all citizens or corporations."

In support of this proposition, Plaintiffs cite *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973). At issue in *Shofstall* was a school financing system that taxpayers and students alleged was discriminatory because of disparity wealth in school districts resulted in inequality in education for students and an unequal burden on taxpayers. *Id.* at 89. The case at bar is distinguishable from *Shofstall* in several ways. First, and perhaps most obviously, *Shofstall* examined a distinction amongst public school districts, whereas the present case concerns a distinction between public and private schools as a whole. *Id.* at 90. Second, Plaintiffs do not allege that the challenged section of HB2898 results in an inequality *in education*, but rather an inequality in a "safe educational *environment*." In doing so, Plaintiffs presume not only that the right to education is a fundamental right, but that the right to a "safe educational environment" is a fundamental right. Simply put, Arizona courts have never reached such a conclusion.

What's more, this Court reexamined *Shofstall* in *Roosevelt Elementary School District No. 66 v. Bishop*, noting that it was not dispositive and specifically declining

to address the question of whether education is even a fundamental right. 179 Ariz. 233, 238 (1994). Pointedly avoiding addressing the application of Arizona's equal protection clause, the court instead examined the issue through the lens of the specific education provisions in the Arizona Constitution. *Id.*

Thus, to grant Plaintiffs' requested relief, the Court would need to hold for the first time that within the as-of-yet unrecognized fundamental right to education is a further sub-fundamental right to attend public or charter schools where other students are required to wear face coverings and/or undergo mandatory vaccination for COVID-19. But whether such requirements are arguably necessary or sufficient to maintain a "safe educational environment" or are otherwise appropriate as a matter of education and health policy is currently a question of great societal debate. It is for the Legislature and the democratic process to decide that debate, not the courts through hurried creation of new fundamental rights. Because the fundamental right Plaintiffs identify does not exist, the court should apply the rational basis standard.

Even if the court applies strict scrutiny, Section 12 of HB2898 is necessary to achieve a compelling state interest. Generally, maintaining a distinction between public and private schools ensures freedom of choice in education; and specifically in this context, the State has an interest in protecting parental autonomy and parents'

rights to make decisions concerning the education of their children. *See* Resp. 12-13. The Legislature also has an interest in maximizing public and charter school enrollment, which is furthered by allowing parents to choose whether their children will wear face coverings or undergo vaccination.

Further, the distinction between public and private schools makes sense when considering the funding differences between the two; unlike private schools, public schools are public entities under state law and funded by the state. The Arizona Constitution itself singles out public schools in Article 11, Section 1, which provides that "[t]he legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform *public* school system" (emphasis added). The State's existing statutory distinctions between public and private schools in a wide range of settings further supports its interest maintaining such a distinction. Resp. 13. And because a "safe educational environment" is not a fundamental right, HB2898 does not violate the equal protection clause of the Arizona Constitution.

III. THE TRIAL COURT ERRED BY FINDING SB1819 UNCONSTITUTIONAL IN ITS ENTIRETY.

This Court has stated several times that a violation of single subject rule only voids the unrelated subjects. *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 243 (2004) ("Thus, 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.") (citation omitted); *Harold*, 74 Ariz. at 213 ("It is not claimed and, of course, could not logically be claimed that the entire act is vitiated even if it be true that the act contains matters unrelated to the subject matter embraced in the title.").

The trial court never determined that the unchallenged sections of SB1819 were not expressed in the act's title, although it recognized that "[e]xcept for the unrelated subjects covered in SB1819, the contents confirm that budget reconciliation is the subject." Ruling 7. Because portions of the act are embraced in the title, the trial court erred by finding the entire act unconstitutional.

A. Severance Is Required By The Arizona Constitution.

The trial court held that "[w]hen an act violates the single subject rule, the whole act fails." Ruling 14. This ruling is contrary to the express language of the Arizona Constitution. If an act includes more than a single subject, only the subject or subjects not expressed or embraced in the title are void, not the entire act.

Plaintiffs argued below that the remedy is different for a violation of the title requirement than it is for a violation of the single subject rule, objecting that the rules cannot be "conflate[d]." Reply Supp. Mot. Prelim. Inj. 4–5. The plain language of the Constitution makes no such distinction. The two rules are intertwined, and must be considered together. Indeed, the Constitution defines the title requirement based

on whether "any **subject** [is] embraced in an act which [isl not [] expressed in the title." Section 13 (emphasis added). Unless Plaintiffs believe "subject" in that clause means something different from the earlier use of the word in the same section ("Every act shall embrace but one **subject**…"), then a title violation necessarily involves one or more of the **subjects** of the act not being expressed in the title.[5] Plaintiffs effectively admit this by challenging only six sections of SB1819 as not being expressed in the title. Compl. ¶ 133. Therefore, the remaining sections, unchallenged for any title violation, must be presumed to be constitutional under the title requirement.

Plaintiffs argued, and the trial court accepted, that the only appropriate remedy for violating the single subject rule is to strike down the entire bill, citing *Litchfield Elementary Sch. Distr. No. 79 v. Babbitt*, 125 Ariz. 215 (App. 1980). While the Court of Appeals did strike down the entire act in that case, the decision does not foreclose a future court from severing where circumstances permit. First, *Litchfield* is inconsistent with the plain language of Section 13.

Second, *Litchfield* invoked a rule that applies to "an act containing two or more subjects adequately expressed by its title." *Id.* at 226 (quoting Ruud, M.H., *No*

[5] There may be occasions when a title does not express or embrace any subject of the act, but that situation does not exist here.

Law Shall Embrace More Than One Subject, 42 Minn. L. Rev. 389, 398 (1958)). Indeed, the four cases cited as authority in *Litchfield* stated that striking down the entire act was appropriate because the multiple subjects were each described in the title of the challenged acts. *Id.*[6] Therefore, there is no "general rule" requiring that entire acts be voided for single subject violations; the title must be considered in determining the scope of any remedy. The trial court did not do so here.

Finally, even without the clear constitutional severance provision, severance would be appropriate. This Court has adopted a rule 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 (1999) (quoting *State v. Coursey*, 71 Ariz. 227, 236 (1950)). To do so, the Court looks to the text, history, and structure of the act to glean whether the "valid and invalid portions are not so

[6] *See also Power, Inc. v. Huntley*, 235 P.2d 173, 180 (Wash. 1951) ("It is our view that [the act] contains two unrelated subjects in the title and in the act, and is unconstitutional and void in its entirety."); *Jackson v. State*, 142 N.E. 423, 426 (Ind. 1924) (holding severance "is not permissible where the act both in its title and in the body treats of two different subjects"); *In re Advisory Opinion*, 240 N.W.2d 193, 195 (Mich. 1976) ("A prohibition against the passage of an act relating to different objects expressed in the title makes the whole act void."); *Simms v. Sawyer*, 101 S.E. 467, 472 (1919) ("It will be noticed that both of the subjects of legislation covered by the act are included within its title.").

intimately connected as to raise the presumption the legislature would not have enacted one without the other, and the invalid portion was not the inducement for the act." *Randolph*, 195 Ariz. at 427 (quoting *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 344 (1999)).

B. The Unchallenged Sections of SB1819 Do Not Violate The Title Requirement And Are Not Unconstitutional.

As discussed above, the State's position is that all sections of SB1819 satisfy both the title and single subject requirements of Section 13. Nevertheless, even applying the trial court's more restrictive requirements, the subject of most sections of SB1819 are expressed in the title of the act and, therefore, are not unconstitutional.

Significantly, and conclusively for purposes of this appeal, Plaintiffs did not challenge forty-six of the fifty-two sections of SB1819 as violating the title requirement, so they must be presumed to be constitutional under that requirement. Plaintiffs made broad allegations that Section SB1819 "contains legislation on multiple, unrelated subjects," Compl. 82–83, but it neither alleged nor proved that the unchallenged sections are not related to "budget procedures" for title purposes. Following Plaintiffs' lead, the trial court did not consider whether the unchallenged sections included provisions that would fit within its own definitions of "budget procedures." It is simply too late for Plaintiffs to argue that any of the unchallenged

provisions of SB1819 violate the title requirement, so the Arizona Constitution requires that those provisions not be voided.

Moreover, the trial court agreed that the title of SB1819 provides notice that the bill relates to "budget procedures" and "budget reconciliation." It stated "budget" refers to the budget process, and "procedure" as "a particular way of accomplishing something; a series of steps followed in a regular definite order." Ruling 12. It considered "budget reconciliation" to be "budget-related bills that exist to provide the substantive law necessary to carry out the State's annual appropriation." Ruling 3.

Even a cursory examination of the unchallenged sections of SB1819 show that most satisfy even the trial court's definitions. Section 37 of SB1819 addresses the budget stabilization ("rainy day") fund and provides that, notwithstanding A.R.S. § 35-144, for certain fiscal years the legislature is not required to appropriate monies to or transfer monies from the budget stabilization fund. It is difficult to see how this provision does not fit within the title "budget procedures" in that it addresses a budget subject and provides a procedure relating to a certain fund.

Similarly, Section 42 of SB1819 exempts the 2022 appropriation for DPS body cameras from oversight by the Information Technology Authorization Committee. This exemption from the statutory oversight process was intended to

ensure that funds appropriated to DPS in the general appropriation bill (SB1823) could be expeditiously used to purchase body cameras for public safety officers. The trial court's Ruling frustrates the Legislature's attempt to do so and leaves those appropriated funds in limbo (or at least slows expenditure of the funds).[7]

There are numerous other examples, but these examples demonstrate why the unchallenged portions of SB1819 are not unconstitutional, even if the six challenged sections address subjects not expressed in the title of the act.[8]

IV. PROSPECTIVE APPLICATION

No Arizona court has ever applied the single subject rule to invalidate a BRB, and thus the Legislature for decades has relied upon BRBs and Omnibus

[7] This example further demonstrates the issues caused by the trial court's Ruling. Does the Legislature's decision to create such an exemption set forth too much substantive policy or is it sufficiently tied to the budget process? No one now knows how to answer that question.

[8] The trial court effectively concluded, without analysis, that provisions that address different agencies could not embrace the single subject of "budget procedures." Ruling 14. One example showing how widely its conclusion misses the mark is its reference to the Public Safety Personnel Retirement System ("PSPRS"). Sections 12 through 18 of SB1819 change when PSPRS must submit a final report on contribution rates for the ensuing fiscal year from December 31 to December 1 of each year. Section 110 of SB1823 appropriates $1 billion to PSPRS to reduce the State's unfunded liability for specified employer accounts. Apparently, the Legislature wants earlier information about contribution rates to use in its process of putting together future budgets. The trial court's Ruling does not explain how this does not fit within the one general subject or one general idea of budget procedure.

Reconciliation Bills ("ORBs") as vital tools to carry out its democratic duties.[9] Thus, should the Court conclude that any of the BRBs here violate the single subject rule, the Court should only apply such ruling prospectively, thereby allowing the BRBs at issue in this case to stand. "Whether an opinion will be given prospective application only is a policy question within this court's discretion." *Fain Land & Cattle Co. v. Hassell*, 163 Ariz. 587, 596 (1990); *Turken v. Gordon*, 223 Ariz. 342, 351, ¶ 44 (2010). Prospective application is appropriate where newly articulated standards or widely misunderstood standards have caused parties to perform in a certain manner.

It is indisputable that, for decades and on many occasions, the Legislature has used BRBs and ORBs to complete the budgeting process. *See Bennett*, 206 Ariz. at 520. Despite that repeated use, the courts have never defined or foreshadowed the legal principles applying to BRBs or otherwise analyzed their constitutionality under the single subject rule. Quite the opposite, actually. In *Bennett*, the Court refused to address the application of the single subject rule to ORBs, leaving in place provisions that arguably violated the single subject rule. It is hardly surprising, then, that the

[9] The Court in *Bennett* discussed ORBs in dicta, but as noted above the Legislature took that to heart and broke up the 3 ORBs into 8-10 BRBs in future budgets. *See supra* page 3; *Bennett*, 206 Ariz. at 528-29 ¶¶37-40 nn.8-9.

Legislature subsequently believed that the courts would not upset the legislative budgeting process by forcing it to separate out BRBs into many separate bills.

Equally important, this Court has never voided an entire act because of a single subject violation, when some parts of the act do not violate the title requirement and severance is permissible under this Court's severance jurisprudence.

If the Court is now concerned that legislative use of BRBs may someday result in logrolling, outlawing BRBs in part or in whole on a forward-looking basis addresses that concern, and the Legislature will adjust its practices accordingly. But applying a new single subject requirement retroactively, thereby upsetting not just the FY2022 budgeting process but potentially scores of BRBs and ORBs passed in the last several decades, would not address a future logrolling concern. Potentially upsetting scores of BRBs and ORBs, with no warning, would be highly inequitable to the democratic process in Arizona. Thus, should the Court impose the dramatic shift in the legislative process that Plaintiffs seek, it should do so only prospectively.

CONCLUSION

For the reasons stated above, the trial court's Ruling should be reversed.

DATED this 5th day of October, 2021.

MARK BRNOVICH
ATTORNEY GENERAL

By: */s/ Michael S. Catlett*
Joseph A. Kanefield (No. 15838)
Brunn W. Roysden III (No. 28698)
Michael S. Catlett (No. 025238)
OFFICE OF THE ATTORNEY GENERAL

Patrick Irvine (No. 006534)
Lyndsey M. Maasch (No. 035548)
FENNEMORE CRAIG, P.C.

Attorneys for Defendant/Appellant
State of Arizona