

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

APPELLANT’S REPLY BRIEF

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ARGUMENT

I. STANDING AS TO SB1819

Plaintiffs continue to misapply the standing requirement. In *American Life Ins. Co. v. State Dept. of Ins.*, 116 Ariz. 240 (App. 1977), the plaintiffs were directly subject to a new tax imposed by the challenged legislation. Thus, they would be injured by the statute that allegedly violated the title requirement. The State argued that “the Insurance Companies must show prejudice incurred by the defective title,” which would require harm beyond direct application of the new law. The court of appeals rejected this argument, but it did not hold that the statute could be challenged by anyone who merely alleged a violation of the title requirement. Plaintiffs’ interpretation would effectively eliminate standing in title and single subject cases. This Court’s holding in *Bennett v. Napolitano*, 206 Ariz. 520 (2003), shows that is not the law.¹ Plaintiffs submitted no evidence that any of the provisions in SB1819 will directly apply to, or harm, them in the first instance.² Plaintiffs ask for an advisory opinion on the constitutionality of SB1819.

¹ There were no live witnesses below, so the trial court’s findings are not owed deference. See *Broemmer v. Abortion Servs. of Phoenix, Ltd.* 173 Ariz. 148, 150 (1992).

² Arizona Advocacy Network’s blanket statement that its “core mission will also be thwarted if SB 1819 goes into effect,” with no further detail or evidence, is insufficient.

II. POLITICAL QUESTION

Plaintiffs' attempt to cast this case as a rote application of the single subject and title requirements misses badly. They are asking the Court to determine "whether legislation is logically connected to 'budget reconciliation,'" Response 23, but offer no help in defining how that determination will be made, and fail to address the many questions raised by their position. The trial court did not provide guidance on those questions either. Determining what is necessary to effectuate the budget is a political question that defies Plaintiffs' simplistic analysis.

Plaintiffs' comparison to determining whether an act is an "appropriation" misses the mark. Response 23. Unlike "budget reconciliation," "appropriation" is a term that is contained within the Constitution and has a well-understood meaning. *Forty-Seventh Legis. v. Napolitano*, 213 Ariz. 482, 487 ¶9 (2006). Moreover, courts are not asked whether the appropriation is "necessary" or "logically connected" to any budget, questions which necessarily involve a much broader and more subjective analysis.

III. TITLE

Plaintiffs assert that the State asks this Court to ignore the words "budget reconciliation" in the titles of the challenged acts and rule that anything related to the specified subject (K-12, higher education, health, budget procedures) can be

encompassed within the title. Response 10. Apparently, Plaintiffs would see no title issue if “budget reconciliation” was not in the title at all, leaving only the general subject. In reality, pairing a specific subject with “budget reconciliation” provides greater notice of the contents of an act and its connection with the budget process than Plaintiffs’ suggested option.

Plaintiffs’ essential claim is there must be a direct connection between the BRB and the budget. That is not the law. This Court has held that “a provision in [an] 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.” *State v. Harold*, 74 Ariz. 210, 214 (1952); *Black & White Taxicab Co. v. Standard Oil Co.*, 25 Ariz. 381, 394 (1923) (the title requirement is violated when “[t]he titles clearly indicated one thing, and the act thereunder provided for another thing, entirely out of harmony therewith”). The Court should review the final budget holistically and under rational basis for compliance with title and subject requirements. When paired with a specific subject, as the Legislature has done for many years,³ notice is provided to other legislators and the public of the general subject of the act.

³ For additional information about the history of the Legislature’s use of BRBs, see the Brief of *Amici Curiae* Bowers, et al.

IV. SINGLE SUBJECT

ASBA's rhetoric regarding the evils of single subject violations rings hollow in light of its raising only title challenges to HB2898, SB1824 and SB1825. ASBA's title challenges to those bills can only succeed if the challenged sections deal with a different **subject** than the title. Ariz. Const. art. 4, pt. 2, § 13 (every act must embrace "but one subject and matters properly connected therewith, which subject shall be expressed in the title."). ASBA, therefore, must (incorrectly) believe that those bills contain multiple subjects, but chose to limit its gripe to the title for policy reasons.

Plaintiffs' argument that the State's position regarding SB1819 would nullify the single subject rule because the Legislature could pass one bill entitled "Arizona law" that revokes speed limits and guarantees the right to abortion, is absurd and unrelated to the facts of this case. SB1819 is entitled "budget reconciliation" and "budget procedures." This Court may find some of the contents of the act are not indexed in that title, but the Legislature used a title that provides notice of the general subject of the bill. In fact, each of the provisions of the bill embrace the "one general subject" and "one general idea" of "budget procedures."⁴

⁴ Attached as an Appendix to the Amici Curiae Brief of Leach, et al. is a detailed list showing the relationship of each provision of SB1819 to the budget feed bill. This list highlights the direct and indirect relationship of each of those provisions to the budget.

V. SEVERABILITY

Plaintiffs ask this Court to ignore the plain language of the Arizona Constitution, which specifically provides that 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. Ariz. Const. art. 4, pt. 2, § 13. Plaintiffs do not attempt to reconcile their position with the language of the Constitution. Because the trial court never determined that the unchallenged sections of SB1819 were not expressed in the act's title, and Plaintiffs never argued those sections violated the title requirement, the trial court erred by finding the entire act unconstitutional.⁵

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)). Plaintiffs fail to address this standard. There is nothing in the record, and no argument has been made, that forty-six of the fifty-two sections of SB1819 are not workable even if six of the sections are void.

⁵ Plaintiffs note that Sections 48-50 of SB1819 are appropriations and asserts that the act also violates Ariz. Const. art. IV, pt. 2, §20. Response 15 n.3. Plaintiffs did not challenge those sections as violating the title requirement of Section 13. In any event, under Section 20 only the appropriation provisions of an act should be at issue.

VI. PROSPECTIVE APPLICATION

Plaintiffs ask this Court to ignore the predictable results of the ruling they seek, which are numerous challenges to prior BRBs and ORBs based on new and more strictly applied applications of the title and single subject rules. Response 25 (“But the Court need only apply the single subject and title requirements to the challenged BRBs.” (emphasis in original)). The Gift Clause has also been in the Arizona Constitution since statehood, but this Court recognized in *Turken v. Gordon*, 223 Ariz. 342, 351, ¶ 44 (2010), that prospective application is appropriate when the Court’s application of the Constitution changes. Here, holding that budget reconciliation provisions must be directly tied to the budget, and “necessary to implement the budget” (whatever that means) will be new rules. And, striking down an entire act for a violation of the single subject rule when some, but not all, of its provisions are included in the act’s title will certainly be new rule of law.

VII. EQUAL PROTECTION

Plaintiffs continue to insist that differentiating between public and charter schools and private schools is unlawful. To the contrary, doing so is rational and both the Arizona Constitution and multiple provisions of A.R.S. already do so. OB at 13. Plaintiffs’ equal protection claim cuts against Plaintiffs’ title claim—HB2898 only applies to public and charter schools because the budget only funds those

schools. What Plaintiffs actually claim is a *substantive* right for public school districts to force elementary and secondary students to wear a face covering or obtain a vaccine. There is certainly no fundamental right for them to do so, and the Legislature does not act irrationally when it prefers parent or student choice and declines to fund public mandates.

CONCLUSION

The trial court's Ruling should be reversed. The State respectfully requests that the Court resolve the issues presented through an expedited decision order with a full opinion to follow.

DATED this 20th day of October, 2021.

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