ARIZONA COURT OF APPEALS

DIVISION ONE

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

STATE'S REPLY BRIEF

Mark Brnovich
Attorney General
Firm State Bar No. 14000
2005 N. 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES..iii

INTRODUCTION.. 1

ARGUMENT... 4

I. The Act's Text And Legislative History Require Reversal. 4

II. The Arizona Constitution Does Not Require The State To Fund Additional State Aid For Education To Cover Local Desegregation Expenses. 17

CONCLUSION 24

TABLE OF AUTHORITIES

Page

Cases

DaimlerChrysler Servs. N. Am., LLC v. Ariz. Dep't of Revenue
210 Ariz. 297(App. 2005) 15

In re Estate of King
228 Ariz. 565 (App. 2012) 16

In re Estate of Winn
214 Ariz. 149 (2007) 11

Koons Buick Pontiac GMC, Inc. v. Nigh
543 U.S. 50 (2004) 2

Morales v. Trans World Airlines, *Inc.*
504 U.S. 374 (1992) 11

Pinal Vista Props., L.L.C. v. Turnbull
208 Ariz. 188 (App. 2004) 9

Walgreen Ariz. Drug Co. v. Ariz. Dep't of Revenue
209 Ariz. 71 (App. 2004) 12

Constitutional Provisions

Ariz. Const. art. IX, § 18 .... 3, 8, 18, 19, 22

Statutes

A.R.S. § 15-101.. 10, 11, 12, 13, 16

A.R.S. § 15-901.. 2

A.R.S. § 15-910.. passim

A.R.S. § 15-972 .... 3, 9

A.R.S. § 15-991 6

A.R.S. § 42-17051 22

A.R.S. § 42-17101 21

A.R.S. § 42-17103 21

A.R.S. § 42-17105 21

A.R.S. § 42-17151 .... 21, 22

A.R.S. § 42-17152 20

A.R.S. §§ 42-17051 through -17058 20

INTRODUCTION

Plaintiffs spill an enormous amount of ink asserting that this case is all about A.R.S. § 15-972(E), and that the 2018 amendments to A.R.S. § 15-910 (the "Act")—which precipitated this case—are simply not relevant. Plaintiffs go so far as to contend that applying the Act to the dispute here is tantamount to a "tail wag[ging] a *different* dog." TUSD Answering Brief ("AB") at 34. But, under Plaintiffs' arguments, the Act is either (1) a complete nullity (as the tax court held), or (2) a likely-unconstitutional budget provision that bizarrely lacks any budgetary effect, instead implementing a notice-only provision never actually sought by anyone.

Also irrelevant, in Plaintiffs' telling, is the clear legislative history, which demonstrates the *uniform* view of legislators—both for *and* against the Act—as to *exactly* what effect the Act would have: ending the State's reimbursement for the desegregation expenses at issue here. If there is *any* legislative history suggesting that a single legislator harbored the slightest doubt as to the specific budgetary effect of the Act, Plaintiffs have not pointed to it.

Ultimately, as the Supreme Court has observed, “there is no canon against using common sense in construing laws as saying what they obviously mean.” *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 63 (2004) (citation omitted). Application of a modicum of common sense here dispels any doubt as to what the Legislature actually intended with the Act. Certainly the Legislature possessed no such doubts.

Moreover, Plaintiffs *conceded* that the amounts at issue were levied as *secondary* property taxes. APP-115 ¶7. That concession is fatal: A.R.S. § 15-972(E) expressly refers only to *primary* property taxes for purposes of calculating “additional state aid to education.” Thus, even ignoring the text of the Act (as Plaintiffs largely do), the simple combination of Plaintiffs’ concession and the bare text of A.R.S. § 15-972(E) alone requires reversal.

The tax court thus erred in holding that the State must continue to fund desegregation expenses in excess of Tucson Unified School District (“TUSD”)’s revenue control limit.[1] The Legislature explicitly amended A.R.S. § 15-910 through the Act to provide that such expenses may only be paid from a “secondary” property tax. But the provisions

[1] The revenue control limit includes a base per student amount as well as transportation expenses and is defined in A.R.S. § 15-901.

for additional state aid for education only apply to the "primary" property taxes. The Act's effect is thus to deny "additional state aid for education" funding to Plaintiffs.

Contrary to Plaintiffs' assertion, this case does not involve any assertion by Defendants that a county or school district may levy ad valorem taxes in excess of 1% of the property's full cash value (the "1% Limit") in violation of Ariz. Const. art. IX, § 18. Nor is any genuine constitutional issue actually presented: this case involves a quintessential budgetary decision by the Legislature to cease funding it had previously provided. Our Constitution gives the Legislature the power of the purse, and thus the authority to make such a decision.

Plaintiffs argue that the changes in A.R.S. § 15-910 can have no impact on A.R.S. § 15-972. AB at 17. The Answering Brief espouses the same erroneous conclusions as the tax court below. In particular, Plaintiffs insist (AB at 7) that nothing changed with the new legislation and that they are entitled to receive additional state aid for education just as they did previously. They are half right: A.R.S. § 15-972(E) was not amended by the Act, the State still funds the 1% Limit excess of *primary* property taxes that the district is permitted to budget. But the

half they are wrong about precludes relief: the amount of desegregation expenditures at issue in this case are now *secondary* in nature by statute, and therefore ineligible for state funding under § 15-972(E).

Ultimately, Plaintiffs' argument violates both the Act's statutory text and the unequivocal legislative history. Nor, as the tax court held, is the State's interpretation either "unworkable" or unconstitutional. It is easily workable, as ADOR had no trouble implementing it and Plaintiffs have calculated its effect *to the penny*. And, as a simple budgetary decision, it is squarely within the Legislature's constitutional authority. This Court should accordingly reverse.

ARGUMENT

I. The Act's Text And Legislative History Require Reversal.

In 2018 the Legislature enacted Senate Bill 1529, a budget reconciliation bill for 2018-2019 (the "Act"). (State Appendix ("APP") 176-192.) A portion of the Act altered the treatment of desegregation expenses under Arizona Revised Statutes Title 15, chapter 9. Plaintiffs and the tax court have given no budgetary effect to the Act. Such an interpretation violates all applicable rules of statutory construction.

The Legislature added A.R.S. § 15-910 in 1983 to permit excess funding for desegregation expenses, largely paid by the State. At that time, it is exceedingly doubtful the Legislature could have anticipated just how *ineffective*—whether through incompetence or recalcitrance, or some combination of both—that TUSD would be in complying with the desegregation orders at issue, remaining out-of-compliance more than *35 years later*.

Faced with continued requests for millions of dollars in additional state aid for education, the Legislature's decades-long patience appears to have broken. It therefore included provisions in the Act to amend A.R.S. § 15-910 to change the funding source for excess school desegregation expenses from a primary property tax to a secondary property tax. To achieve the legislative goal, Section 2 of the Act amended A.R.S. § 15-910 by removing references to "primary" property tax and adding the term "secondary" instead. The bill also added A.R.S. § 15-910(L). This new provision states:

> 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.

The Legislature amended other portions of A.R.S. § 15-910 consistently with this new provision. *See, e.g.*, A.R.S. § 15-910(H)(2) (providing that the superintendent shall estimate the additional amount needed "from the secondary property tax as provided in section 15-991"); A.R.S. § 15-910(I) (providing that if the school district governing board chooses to budget for excess desegregation expenses it shall notify the county school superintendent to include the expenses in the estimate of additional amounts needed "from the secondary property tax as provided in section 15-991"). (APP 179-182.)

As amended, A.R.S. § 15-910 still permits school districts to budget for desegregation expenses in excess of their revenue control limits, but such expenses must be paid from a secondary and not a primary property tax levy. The Act's clear and unambiguous language

thus requires that, starting with the 2018-2019 fiscal year, school districts may not levy a primary property tax to pay for desegregation expenses in excess of their revenue control limit and instead must levy a secondary property tax levy to fund such expenses.

Plaintiffs wrongly assert that Defendants agree that the levy for desegregation expenses is a primary levy under A.R.S. § 15-972(E).[2] AB at 16. As set forth above, the Act clearly provides that desegregation expenses in excess of the revenue control limit must be paid from a *secondary* tax levy. Therefore, for purposes of Title 15 of the Arizona Revised Statutes, including A.R.S. § 15-972(E), the desegregation expenses at issue must be considered a secondary tax levy and not a primary tax levy.

The effect of the amendment to A.R.S. § 15-910 in the Act was to stop the use of state monies to fund local desegregation efforts in excess of the 1% Limit. By requiring the funding for the local desegregation efforts to come from a secondary property tax, the Legislature removed such expenses from the calculation of additional state aid for education

---

[2] Plaintiffs' accusation is particularly strange given their assertion elsewhere that the amount at issue was levied as a *secondary* tax. APP-115 ¶7.

under A.R.S. § 15-972(E). There was no need for the Legislature to amend A.R.S. § 15-972(E) because that provision only applies to primary property taxes. For purposes of calculating additional state aid for education:

> Before levying of taxes for school purposes, the board of supervisors shall determine whether the total *primary* property taxes to be levied for all taxing jurisdictions on each parcel of residential property, in lieu of this subsection, violate article IX, section 18, Constitution of Arizona. . . . If the board of supervisors determines that such a situation exists, the board shall apply a credit against the *primary* property taxes due from each such parcel in the amount in excess of article IX, section 18, Constitution of Arizona. Such excess amounts shall also be additional state aid for education for the school district or districts in which the parcel of property is located.

A.R.S. § 15-972(E) (emphasis added). This statute provides for a credit for additional state aid for education to the extent that the primary property taxes due on residential property exceed the 1% Limit. The statute does not authorize a credit for secondary property taxes to the extent they are subject to the 1% Limit.

The Legislature's amendments to A.R.S. § 15-910 must be read *in pari materia* with the provisions in A.R.S. § 15-972(E). Plaintiffs strangely insist that these two statutes are unrelated. AB at 17. But

both are found in the same chapter of title 15, and *both* concern school financing. Because both A.R.S. § 15-910 and § 15-972 relate to the same subject, they must be construed *in pari materia. See Pinal Vista Props., LLC. v. Turnbull,* 208 Ariz. 188, 190, ¶10 (App. 2004) (reading tax statutes together to conclude that a State tax lien was superior to a private investor). Read together, by requiring the desegregation expenses in excess of the revenue control limit to be paid from a secondary property tax the Legislature made such expenses ineligible for additional state aid for education.

As explained in the Opening Brief ("OB") at 36-37, in passing the Act the Legislature intended to impact the State budget. Unrelated, non-budget provisions simply could not be included in a budget bill. The Legislature obviously intended that its change requiring desegregation expenses in excess of the revenue control limit to be paid from a secondary property tax to have a beneficial budgetary impact for the State. By contrast, Plaintiffs' interpretation has no impact on the budget whatsoever. Indeed, their interpretation makes the legislative changes of no consequence whatsoever for any party.

Plaintiffs assert that implementing the Act as written conflicts with the statutory definitions in A.R.S. § 15-101. AB at 23. The definitions in A.R.S. § 15-101 do not support Plaintiffs' argument that the funding for desegregation expenses in excess of TUSD's revenue control limit is still a primary tax for purposes of A.R.S. § 15-972(E). The education statutes define primary property taxes as "all ad valorem taxes except for secondary property taxes." A.R.S. § 15-101(20). Contrary to Plaintiffs' assertion (AB at 16), the education statutes do not define primary property taxes as all ad valorem taxes subject to the 1% Limit. Therefore, interpreting the term "primary property taxes" as used in A.R.S. § 15-972(E) to include the secondary property tax for desegregation expenses is contrary to the statutory definition of a primary property tax in A.R.S. § 15-101(20).

Defendants do not contend that the Act's amendments to A.R.S. § 15-910(L) altered the definition of "primary property taxes" as used in A.R.S. § 15-972(E) as Plaintiffs' allege. AB at 33. In fact, the Act did not change the definition of primary property taxes at all; rather, it merely required desegregation expenses to be paid from a secondary property tax. There is nothing in the education statutes that support a

position that the "primary" property tax language in A.R.S. § 15-972(E) includes amounts that the Legislature expressly stated can only be paid from a secondary property tax.

The amendments to A.R.S. § 15-910 in the Act allow desegregation expenses to exceed the revenue control limit on the condition that payment of such desegregation expenses comes from a secondary property tax. The education statutes define secondary property taxes 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). The Act, however, specified that secondary property taxes used to pay the desegregation expenses in excess of the revenue control limit do not require voter approval.

In any event, it is black-letter law that specific provisions control over more general ones. *See In re Estate of Winn*, 214 Ariz. 149, 152, ¶16 (2007); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (stating "it is a commonplace of statutory construction that

the specific governs the general"). The Legislature's intention vis-a-vis desegregation expenses has been specifically expressed in the Act, and more recently. To the extent there is a conflict within the statutory definitions, the Act controls as the more-specific enactment.

Limiting the Act to A.R.S. § 15-101(25)'s definition of secondary property tax would also require TUSD to pay for desegregation expenses in excess of its revenue control limit with amounts levied pursuant to an election. But the "cardinal rule of statutory construction is to ascertain the meaning of the statute and intent of the legislature." *Walgreen Ariz. Drug Co. v. Ariz. Dep't of Revenue*, 209 Ariz. 71, 73, ¶12 (App. 2004). The language that the Legislature selected plainly states that desegregation expenses must be paid from a secondary property tax, but does not limit the funding to a voter-approved source. This indicates legislative intent not to limit the secondary property tax for desegregation expenses to one that was levied pursuant to an election. Such an interpretation does not alter the fact that the levy is still a secondary property tax for purposes of Title 15.[3]

---

[3] Plaintiffs are concerned that, because desegregation levies in excess of the 1% Limit would require voter approval, the plain meaning of the Act is thereby unconstitutional and must be rejected. AB at 31.

The language the Legislature used benefits Plaintiffs. For property tax year 2018, which is used to fund the 2018-2019 school year, TUSD's budget included $63,711,047 for desegregation expenses. APP-119. The tax levied for these expenses was not approved by voters. *Id.* Without the desegregation expenses the total property taxes did not exceed the 1% Limit and TUSD was able to levy $55,597,858 to fund its secondary tax for desegregation expenses without voter approval. APP-127. If the term "secondary" in A.R.S. § 15-910 was limited to just the definition in A.R.S. § 15-101(25) and was not considered to be expanded as the Act provides, then TUSD could not have paid for desegregation expenses in excess of its revenue control limit absent an override election *at all* because of the new requirement that such spending come from secondary property taxes. A.R.S. § 15-910(L). Such an interpretation still would not transform the tax that Plaintiffs *assert they levied as secondary* (APP-115 ¶7) into a primary property tax under A.R.S. § 15-972(E). It would instead limit TUSD's ability to

---

Plaintiffs ignore that the pertinent language in the Act is necessary to permit counties to levy taxes for desegregation spending *below* the 1% Limit but *above* the revenue control limit without voter approval. That the statutory provision lacks a disclaimer "but not so much so as to violate the Constitution" is of no moment to its plainly constitutional applications, including those actually at issue in this case.

exceed the revenue control limit, and leave them with a $63,711,047 problem instead of a $8,113,188.62 problem.

The State, on the other hand, believes that the Legislature was authorizing school districts to pay for desegregation expenses in excess of the revenue control limit without an election as long as there is still room under the 1% Limit.

While the State believes that the statutory language clearly favors its position, the language is—*at best* for Plaintiffs—ambiguous. In such circumstances, courts can (and should) consider legislative history to resolve any ambiguities. Plaintiffs criticize Defendants for mentioning the legislative history concerning the Act. AB at 37-38. Legislative summaries and specific comments by legislators during formal hearings on bills are part of the legislative history and can explain the purpose of a bill. The point in quoting some of the testimony is to demonstrate that there is clear evidence of legislative intent to end the State's obligation to pay for the relevant expenses at issue here. All of the Senators explaining their committee vote—those who voted for and against it—noted that the bill shifted these desegregation expenses from the State to local property owners. OB at 15-16. While they

disagreed about whether that was good policy, there was no disagreement about the Act's effect; it was clear to all involved that the bill would shift the obligation from the State to local property owners within the affected school district.

Similarly, the history of desegregation funding is relevant to statutory interpretation. To determine legislative intent, courts look to the statute's policy, the evil it was designed to address, its words, context, subject matter, and effects and consequences. *DaimlerChrysler Servs. N. Am., LLC v. Ariz. Dep't of Revenue*, 210 Ariz. 297, 301 (App. 2005). Thus, in interpreting the Act it is important to understand the extremely long history of the TUSD desegregation order and the millions of dollars the State was contributing towards the desegregation expenses for decades. It is in that context that the Legislature chose to change the funding at issue—which is perhaps unsurprising given how ineffective prior spending had been in securing compliance with the federal court orders at issue.

Plaintiffs also assert that if the goal of the Act was to end State funding for desegregation expenses, the Legislature enactment did not achieve it. AB at 38-40. Plaintiffs insist that the only way the

Legislature could change the additional state aid for education was to amend A.R.S. § 15-101 and § 15-972(E). While the Legislature's choice of statutory language to effectuate its defunding decision may not be the way that Plaintiffs deem best and clearest, that does not nullify the Legislature's enactment. *See In re Estate of King*, 228 Ariz. 565, 569, ¶19 (App. 2012) (finding that while the statute could have been more artfully written the legislative intent was clear). And notably, the Act ended state funding *in excess of* the 1% Limit. The State continues to be responsible for funding roughly half of local education spending statewide, including amounts for desegregation compliance, so any insinuation by Plaintiffs that the State somehow opposes desegregation efforts is simply untrue.

The State funds *additional* state aid for education where the total primary property taxes exceed the 1% Limit. A.R.S. § 15-972(E). The Legislature amended A.R.S. § 15-910 to permit a school district to budget for desegregation expenses in excess of the revenue control limit only if such expenses are paid from a secondary property tax. Regardless of whether the definition of secondary property taxes is limited to a tax levy approved by voters, the Act makes it perfectly clear

that desegregation expenses beyond the revenue control limit can no longer be funded by a primary property tax. Therefore, such expenses are not part of the calculation for additional state aid for education in A.R.S. § 15-972(E).

II. The Arizona Constitution Does Not Require The State To Fund Additional State Aid For Education To Cover Local Desegregation Expenses.

The tax court ruled, and Plaintiffs insist (AB at 33-37), that it is impossible for TUSD to comply with the 1% Limit unless such amounts are included in the analysis under A.R.S. § 15-972(E). There is no evidence in the record, and none is cited, that establishes that Plaintiffs' cannot satisfy all constitutional and statutory tax levy limitations without additional state aid for education, or any provision that requires the continuation of such aid in perpetuity. To reach that conclusion, Plaintiffs misstate the statutes, the Constitution and Defendants' position.

To start, Plaintiffs assert (AB at 16)—without citation—that the State "concedes" that "TUSD's desegregation levy is necessarily a 'primary' tax under …. the Constitution." But the State has never "conceded" any such thing. Instead, as the State previously and

repeatedly argued, the Arizona Constitution does not use the terms "primary" or "secondary" *at all*, and thus such terminology is entirely inapplicable to the constitutional analysis. OB at 10, 41-42; APP-22-23, 95-96, 108. The "concession" that Plaintiffs divine is thus directly contrary to a crucial distinction that the State has carefully and consistently drawn throughout this entire litigation. That Plaintiffs' arguments effectively require inserting words into the Constitution and State's mouth is inadvertently (and powerfully) revealing.

The State does agree that merely changing the levy for desegregation expenses to a secondary property tax does not automatically exempt such amounts from the Arizona Constitution's 1% Limit. The secondary tax for desegregation expenses under A.R.S. 910(L) is subject to the 1% Limit unless the voters approve it and thereby exempt it. Ariz. Const. art. IX, § 18. Just because the tax to fund desegregation expenses is subject to the 1% Limit, however, does not alter the fact that such expenses must be paid from a secondary property tax for purposes of Title 15, and that additional state aid for education is limited to situations where the primary property tax exceeds the 1% Limit.

Part of the confusion is due to Plaintiffs' erroneous insistence that A.R.S. § 15-972(E) is a tax statute of general application. AB at 13. They attempt to portray the statute as an implementing statute for the 1% Limit. AB at 16. They also assert that A.R.S. § 15-972(E) is the Legislature's answer to how to comply with the 1% Limit. AB at 17. This leads to the absurd conclusion that unless the State continues to fund desegregation expenses, there is nothing to ensure compliance with the constitutional 1% Limit. AB at 29, 31. Not so.

Arizona Revised Statutes set forth in title 15, chapter 9 concern school finance. The provisions of A.R.S. § 15-972(E) are the Legislature's answer as to how to ensure that schools receive their full revenue control limit funding as outlined in that title. The tax court noted that the Arizona Constitution charges "the State with the responsibility to 'provide by law a system of property taxation consistent with the provisions of this section.' Ariz. Const. art. IX, § 18 (8)." APP-10. It erred in finding that by modifying the education statutes, the State abrogated this duty. APP-11–12.

As Defendants noted at tax court (APP-133), the Legislature has provided a system of property taxation in Arizona Revised Statutes

Title 42 that is consistent with the Arizona Constitution. The relevant provisions, found in title 42, chapter 17, set forth the laws governing the tax levy process. This includes the local government budgeting process (A.R.S. §§ 42-17101 through -17110) and the levy process (A.R.S. §§ 42-17151 through -17154). The Legislature also includes various statutory levy limitations in this chapter. *See*, *e.g.*, A.R.S. §§ 42-17051 through -17058.

Regardless of whether there is a credit for additional state aid for education under the education finance statutes, the tax statutes contain a strict prohibition against assessing property tax on residential properties in excess of the 1% Limit. A.R.S. § 42-17152(A). Therefore, changes to the calculation of additional state aid for education in the education statutes under A.R.S. § 15-972(E) cannot by themselves create a constitutional violation of the 1% Limit because the tax statutes in Title 42 control the actual assessment and levy of property tax.

The county budget process can be quite complex and the county must act diligently to comply with both the 1% Limit, as well as with statutory levy limits. While property tax laws are not easy for the

uninitiated, they are obviously not unworkable. Every year a county must estimate the different amounts that will be required to meet its needs for the fiscal year. A.R.S. § 42-17101. It has to publish the estimates of revenues and expenses and give notice of a public hearing. A.R.S. § 42-17103. It has to adopt a budget. A.R.S. § 42-17105. It then has to fix, levy, and assess the amount to be raised from primary and secondary property taxation. This includes fixing and determining a primary property tax rate and a secondary property tax rate. A.R.S. § 42-17151.

The governing bodies of school districts themselves are charged with annually fixing, levying, and assessing the amount to be raised from primary property taxation and secondary property taxation. A.R.S. § 42-17151(A)(1). This amount "shall equal the total of amounts proposed to be spent in the budget for the current fiscal year." *Id.* Moreover, the governing body of a school district is charged with fixing and determining a primary property tax rate and a secondary tax rate that will "produce . . . the entire amount to be raised by direct taxation for that year." A.R.S. § 42-17151(A)(3).

To be sure, there are limitations on how much can be levied and assessed. The desegregation expenses in excess of the 1% Limit that are not covered by additional state aid for education are just one of the many items that must be considered as part of this process. They are similar to the limitations on the aggregate amount of property taxes that A.R.S. § 42-17051 sets forth. There is nothing about desegregation expenses that make them any more or less difficult than all the other limitations the county must consider when budgeting and levying property taxes for its fiscal needs.

In that regard, having lost state aid for education monies in the Act, the county and/or TUSD has other funding options available. They can seek voter approval thereby exempting desegregation expenses from the 1% Limit. Ariz. Const. art. IX, § 18. The school district can simply lower other of its expenses. It may even be able to set the tax rate on all property within its boundaries pursuant to A.R.S. § 42-17151(A)(3) to cover its full expenses even when the 1% Limit is applied to residential property.

In the end, Plaintiffs simply throw up their hands and insist that unless the State continues to fund its desegregation expenses, the whole

tax system is unworkable. AB 33-37. There is no evidence to support that assertion. All counties, cities, towns, community college districts and school districts need to annually determine their budgets and set rates to fund those budgets within the law, and there is absolutely nothing in the record or in the law that suggests that they cannot perform those efforts within the law after the Legislature amended Title 15 to unequivocally end the use of state aid monies to fund desegregation programs beyond the 1% Limit.

The Legislature's right to control the expenditures of State funds is its most quintessential power. By reclassifying the funding source for desegregation expenses to "secondary" property taxes in the education statutes, the Legislature has eliminated the school district's and the county's rights to obtain State reimbursement for such expenditures beyond the 1% Limit. The result follows naturally as the Legislature may freely change the education finance laws that it created by exercising its power of the purse. Plaintiffs provide no basis to prevent the Legislature from exercising this power as it did in the Act.

CONCLUSION

For the reasons set forth above and previously, the State requests that this Court reverse the tax court decision and remand this case with instructions to enter judgment in favor of the State.

Respectfully submitted this 28th day of October, 2020.

Mark Brnovich
Attorney General

/s/ *Drew C. Ensign*
Drew C. Ensign
Deputy Solicitor General
Robert J. Makar
Assistant Attorney General
Attorneys for the State

Lisa Neuville
Jerry A. Fries
Assistant Attorneys General
Attorneys for the Arizona Department of Revenue

Kevin D. Ray
Assistant Attorney General
Attorneys for the State Board of Education and the Arizona Superintendent of Public Instruction