ARIZONA SUPREME COURT

PIMA COUNTY AND TUCSON UNIFIED SCHOOL DISTRICT NO. 1, Plaintiff-Appellees, v. STATE OF ARIZONA et al., Defendant-Appellants.	No. CV 21-0213 PR Court of Appeals No. 1 CA-TX 20-0001 Arizona Tax Court No. TX2018-000737

STATE RESPONDENTS' SUPPLEMENTAL BRIEF

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INTRODUCTION

At its base, this is a case about contrived confusion. No one involved in the interpretative dispute here—certainly not the legislators voting on SB 1529 (the "Act") and least of all Plaintiffs themselves—actually failed to understand what the intent of the Legislature was in enacting the Act. Indeed, as Pima County's own Administrator, C.H. Huckelberry, cogently explained, the Act's intent and effect is "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." Division 1 Appendix ("APP-") 257. That too is exactly the construction given by the Department of Revenue ("ADOR")—seemingly in perfect agreement with Administrator Huckelberry, and just as he predicted. Opinion ¶15 (Ct. App. 2021). And that is further exactly how the Court of Appeals construed it: the Act "eliminated [the State's] obligation under A.R.S. § 15-972(E) to reimburse TUSD for desegregation expenses as additional state aid for education." *Id.* ¶1.

So what then is this dispute about? In a nutshell, Plaintiffs have seized upon some inartful legislative draftsmanship to claim millions of dollars the Legislature palpably intended to deny them.

But perfection in legislative craftmanship is not required to for a statute to be given effect—and TUSD's construction tellingly gives it none at all. As Judge McMurdie rightly observed at oral argument, under Plaintiffs' interpretation the Act is "really a nullity" and "there's really nothing there." Oral Argument at 15:50-16:08. Indeed, *every* tool of statutory interpretation confirms that both ADOR and Administrative Huckleberry had it right: the Legislature intended to cut off one source of State funding for Tucson Unified School District's ("TUSD's") decades-long failure to achieve unitary status after it was found to have engaged in unlawful (and deplorable) *de facto* racial segregation in 1978.

Federal courts made that desegregation finding in 1978, and then began requiring TUSD and Pima County to spend moneys to remedy that unconstitutional discrimination and achieve unitary status. Opinion ¶5. The State began substantially funding those desegregation efforts in 1985, which was still an interminable failure 33 years in 2018 when the Legislature's patience finally broke, and it cut off the State funding at issue here. *Id.* ¶¶6-7.

The Legislature likely shrewdly suspected that TUSD was in no hurry to extricate itself from federal desegregation orders as long as the

State was footing much of the bill; a federal court notably thought as much too. *See Fisher v. United States*, 549 F. Supp. 2d 1132, 1134 (D. Ariz. 2008) ("[P]robably in response to state and federal funding for districts incurring costs pursuant to court ordered desegregation, it became beneficial to continue operating the district pursuant to the Settlement Agreement."). If so, the Legislature would hardly have been shocked when TUSD finally achieved unitary status not long after TUSD was cut off: it did so to the satisfaction of the District of Arizona with a few minor exceptions in April 2021. *See generally Roy v. TUSD*, No. 74-90, 2021 WL 1526455, at *2 (D. Ariz. Apr. 19, 2021) ("It is time for [TUSD] to be released from judicial oversight."). Somehow, once Plaintiffs were no longer spending the State's money, TUSD finally found a way to liberate itself from desegregation orders in a manner that had persistently eluded it for the prior 43 years.

TUSD nonetheless persists in seeking State reimbursement for its post-Act desegregation expenses, contending that the Act does not actually operate as both the Legislature and Administrator Huckleberry thought it would, and the Court of Appeals unanimously held that it did. But TUSD's arguments contravene not only the Act's plain text, but all

of the traditional tools of statutory construction.

As to the text, this result flows inexorably from two simple propositions that the Court of Appeals recognized: (1) A.R.S. § 15-972(E) only provides State funding for "primary," and not "secondary" expenses, and (2) the Act makes desegregation expenses "secondary." Indeed, TUSD's own briefing candidly called its desegregation expenses "secondary"—stating that "TUSD used revenues from *secondary* property taxes rather than primary property taxes," APP-115 ¶7 (emphasis added)—before eventually backpedaling. The combination of those two premises requires affirmance here. And the second is further confirmed by the *four* conforming "primary"-to-"secondary" changes the Legislature made, confirming legislators' overwhelming intent to change the characterization of desegregation expenses.

The canons of construction further confirm that the Court of Appeals got it right. Three are particularly important. *First*, the anti-surplusage canon has enormous force here, where Plaintiffs' construction effectively gives the Act little—*if any*—effect at all, as Judge McMurdie aptly noted. *Second*, the canon of constitutional avoidance is important here. The Legislature undeniably has the power of the purse to control

the spending at issue here. And because the Act can readily be interpreted as an exercise of that power, Arizona courts are obliged to construe it that way (assuming it could be read any other way at all). *Third*, the canon that specific provisions control over general ones refutes TUSD's central premise that the general definition of A.R.S. § 15-101(25) should control over the more specific (and more recent) provisions of § 15-910(L) effectuated by the Act.

Context further confirms the State's interpretation. The Act was passed as part of a *budget* bill, but Plaintiffs' construction gives it no budgetary effect at all. In addition, the Act arose out of TUSD's longstanding failure to achieve unitary status—where TUSD had blown through enormous amounts of State money over decades—and where the federal district court suspected TUSD's heart wasn't in the effort.

Even if any conceivable ambiguity remained from the text, canons, and context, the legislative history conclusively resolves it. That history is one-sided and overwhelming. *Every* legislator who spoke about the Act—both proponent and opponents—understood *exactly* what would occur under it. Not even a scintilla of legislative history supporting Plaintiffs was identified below.

Finally, this case presents no genuine constitutional concerns. As the Court of Appeals properly recognized, the Act "was a policy decision consistent with the legislature's power of the purse." Opinion ¶17. While Plaintiffs attempt to make much about the One Percent Limitation on property taxes of our Constitution, all of the provisions actually at issue here are statutory ones, which the Legislature is amply empowered to amend, and did so here. TUSD may not like that budgetary decision, but it raises no constitutional concerns.

These issues have been fully briefed in the Court of Appeals, where that analysis is presented in much more depth. Those briefs are attached for ease of reference. This brief is therefore intended as a true supplement, adding some high-level points to the State's briefs below and noting some post-briefing developments.

BACKGROUND

The background of this dispute is set forth fully in the State's briefs in the Court of Appeals. A few points are worth highlighting and supplementing.

TUSD's Segregation Finding & Pre-Act Desegregation Efforts

TUSD was found to have operated *de facto* segregated schools in

1978. Opinion ¶5. In 1985, the State began paying for a substantial portion of those desegregation expenses. Opinion ¶¶5, 17.

"TUSD spent millions of dollars over the course of approximately twenty years before the [District of Arizona] called for TUSD to show good cause why unitary status had not been attained." *Fisher v. TUSD*, 329 F. Supp. 3d 883, 888 (D. Ariz. 2018) (citation omitted). The federal district court specifically found "fault with [TUSD's] failure to consider the effectiveness of the programs financed by desegregation dollars over this extended period of time." *Id.* at 888. That court had also 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.

Although the district court "found unitary status had been attained" in 2008, the Ninth Circuit reversed. *Fisher*, 329 F. Supp. 3d at 888. In doing so, the Ninth Circuit affirmed a finding that "TUSD "ha[d] not demonstrated good faith," in part because it "failed to monitor, track, review and analyze the effectiveness of its programs." *Fisher v. TUSD*, 652 F.3d 1131, 1143 (9th Cir. 2011) (cleaned up). Indeed, TUSD "ha[d] been incapable of making logical or meaningful changes to its policies,

practices, or procedures related to desegregation, [and thus] *any progress would have been mere coincidence*." *Id.* (cleaned up) (emphasis added).

The Act

Against this backdrop, the Legislature enacted the Act in 2018, which amended A.R.S. § 15-910. The principal change was creating new subsection (L), which provides in relevant part: "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[.]" A.R.S. § 15-910(L).

The Act also made four conforming changes to these subsections G-K by eliminating references to "primary" taxes or changing them to "secondary." APP-178–82. In doing so, the Legislature "chang[ed] all mentions of 'primary property tax' to either 'property tax' or 'secondary property tax.'"

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 in article 9, § 18 (the "One-Percent Limitation") and (2) the statutory revenue control limit (A.R.S. § 15-947).

The provisions are somewhat complex, and addressed in detail in the briefing below and in the Court of Appeals decision. Importantly here, A.R.S. § 15-972(E) provides a mechanism for school districts to spend amounts that might otherwise cause the county's total "primary" tax levy to exceed the One Percent Limitation on taxes by providing receive State funding for primary property tax overages that permissible education spending creates. That provision thus provides that if "the total primary property taxes to be levied … violate article IX, section 18, [*i.e.*, the One-Percent Limitation] … the board shall apply a credit against the primary property taxes due from each such parcel in the amount in excess of [the One-Percent Limitation]." A.R.S. § 15-972(E). In that event, "[s]uch excess amounts shall also be additional state aid for education for the school district or districts in which the parcel of property is located." *Id.*

In other words, if the total amounts otherwise to be levied as primary property taxes would exceed the One Percent Limitation, the

State will pay the "total *primary* property taxes" overage. *Id.* (emphasis added). This guarantees that the school districts receive all amounts that the Legislature authorized them to spend from primary property taxes.

Post-Enactment Spending

TUSD budgeted $63,711,047 for desegregation expenses for FY 2018-19. 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 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). ADOR refused. APP-144. This suit followed.

Proceedings Below

The tax court granted summary judgment to Plaintiffs. It first concluded 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. That court further recognized that state reimbursement is only available for primary taxes. APP-10. But the tax court concluded that TUSD was entitled to the $8.1 million for excess desegregation expenses because the Act, in its view, was "unworkable" and that it violated our

Constitution by attempting to "trump the constitutional limitation on ad valorem taxes found in Ariz. Const. art. 9, § 18." APP-11-12.

The Court of Appeals reversed. It agreed that the Act "creates a secondary tax category" for desegregation expenses. Opinion ¶15. It rejected the tax court's "unworkable" holding by explaining that "the parties involved did understand and implement the new system" and that "for more than five years after the 1978 desegregation order was imposed, the State did not cover excess desegregation expenses," which was a workable system. *Id.* ¶¶16-17.

The Court of Appeals further recognized that the Act presented no constitutional issues: rather, it was "was a policy decision consistent with the legislature's power of the purse." *Id.* ¶17. "[T]he Arizona Constitution does not define 'secondary property taxes.' That is a term of the legislature's creation, and the legislature is free to modify it." *Id.* ¶14.

This Court granted review.

ARGUMENT

I. The Act Precludes The State Payments To TUSD That Plaintiffs Seek

The Court of Appeals correctly construed the Act to preclude the sums sought by Plaintiffs. That conclusion is supported by the (1) the

Act's plain text, (2) the applicable canons of construction, (3) the context of the Act, and (4) its legislative history. Nor is the Act "unworkable" as the tax court held.

A. The Text Of The Act And Section 972(E) Require Affirmance

Under § 15-972(E), State reimbursement as "additional state aid for education" is only available for "primary property taxes." That appears to be uncontested. The question then is whether desegregation expenses at issue are now "primary" or "secondary" after enactment of the Act.

Even Plaintiffs at times have recognized that such expenses are "secondary." In their summary judgment statement of facts, they admitted: "In FY2018-19, pursuant to A.R.S. §910(L), TUSD used 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." APP-115 ¶7 (emphasis added). At some point, TUSD appears to have realized the effect of that concession, because it contended in the Court of Appeals that: "TUSD's levy was a 'primary property tax'; the levy was not a 'secondary property tax.'" Answering Br.

9. But even then, TUSD occasionally lapsed into its prior characterization, contending that "it levied a '*secondary*' tax for desegregation expenses that was separately delineated as such on tax statements." Answering Br. 41 (emphasis added).

Plaintiffs had it right the first time. By providing that for desegregation expenses, "subsections G through K of this section apply only if the governing board uses revenues from secondary property taxes rather than primary property taxes," § 15-910(L), Subsection L "creates a secondary tax category distinct from the definition in A.R.S. § 15-101(25)." Opinion ¶15; *see also* Opening Br. 51; Reply Br. 11-12. That necessarily follows, because by rendering the ordinary budgetary provisions (*i.e.*, subsections G-K) inoperative for primary desegregation expenses, any such expenses that are budgeted must *necessarily* be secondary expenses. This is particularly true as "primary" and "secondary" are binary alternatives: whatever is not the latter is explicitly the former. A.R.S. § 15-101(20).

The Legislature's intent to make desegregation expenses "secondary" is confirmed by the four conforming changes it made to replace "primary" with "secondary" throughout § 15-910. Opening Br. 14-

15, 52; Reply Br. 6. In doing so, the Legislature underscored its manifest aversion any further treatment/reimbursement of levies for desegregation expenses as "primary" taxes.

B. The Applicable Canons Of Construction Support The State's Interpretation

The State's interpretation is also supported by all relevant canons of statutory interpretation. Three are applicable here.

First, TUSD's interpretation violates the 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). The tax court's interpretation, however, gave the Act no effect whatsoever; indeed, the tax court refused to consider the anti-surplusage canon entirely. Opening Br. 29-30; Reply Br. 4. In contrast, Plaintiffs attempted to argue that the Act effected a disclosure requirement and therefore was not a nullity. That argument fails for the reasons the State explained below. Opening Br. 35-38; Reply Br. 4-9.

Second, the canon of constitutional avoidance also supports the State. "No 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. in U.S.A.*, 194 Ariz. 142, 147 ¶13 (App. 1998).

Here, there is no dispute that the Legislature could constitutionally exercise its power of the purse to cease funding TUSD's excess desegregation expenses. Because that outcome is constitutional, courts are obliged to read the Act in that constitutional manner if it is possible to do so. Here it readily is. Opening Br. 45-48; Reply Br. 5-8.

The tax court's explicit (and Plaintiffs' apparent) reasoning that the Act violates the One Percent Limitation is thus untenable. Because nothing in the Legislature's defunding decision inherently violates our Constitution, the tax court's constitutional holding is untenable.

Third, at best for Plaintiffs, there is some tension between subsection (L), which specifically addresses desegregation expenses, and A.R.S. §15-101(25), which generically defines "secondary"

taxes/expenses. The Court of Appeals aptly observed that "the meaning of A.R.S. §15-910(L) would likely have been more clear if the legislature had amended §15-101(25) as well." Opinion ¶15. True, the Legislature could have been clearer, and this is hardly perfect draftsmanship. But it is well-established that "when there is conflict between two statutes, 'the *more recent, specific* statute governs over the *older, more general* statute.'" *In re Estate of Winn*, 214 Ariz. 149, 152 ¶16 (2007) (citation omitted) (emphasis added). Subsection (L) is just that: newer and more specific. It thus controls.

Under that canon, the "tax court erred in concluding the expense of complying with a desegregation order could not be funded though secondary property taxes simply because the desegregation expenses did not fit under the more general definition in A.R.S. § 15-101(25)." Opinion ¶15; *accord* Opening Br. 32-35; Reply Br. 11-12.

C. The Statutory Context Supports The Decision Below

The statutory context also supports the Court of Appeals' decision, principally for two reasons.

First, the Act was passed as a *budget* bill. But Plaintiffs give it no budgetary effect at all, which both conflicts sharply with its explicit

purpose and also creates its own set of potential constitutional concerns. Opening Br. 36-37; Reply Br. 4.

Second, the Act was passed against a backdrop of federal courts expressly finding that TUSD was spending the State's money wastefully, and was seemingly indifferent to whether the spending was doing any good at all. *Supra* at 7-8; Opening Br. 53-54; Reply Br. 15. As those courts observed, TUSD was so completely blasé as to the effectiveness of its desegregation spending that it "failed to make 'the most basic inquiries necessary to assess the ongoing effectiveness of its student assignment plans;' [and] had 'exacerbated the inequities' of racial imbalances through its 'failure to assess program effectiveness[.]'" *Fisher*, 652 F.3d at 1142.

In this context, the Legislature's exhaustion with TUSD's apparently wasteful, lackadaisical, and seemingly unending desegregation efforts makes perfect sense. Opening Br. 53-55; Reply Br. 15. Indeed, in light of the federal courts' explicit findings, Plaintiffs' contention that the Legislature did not intend any alterations to State funding of TUSD's desegregation efforts is distinctly implausible.

D. The Legislative History Unequivocally Supports The State

Even if any doubts as to the intent of the Act remained after considering its text, the canons of construction, and context, the legislative history dispels them. Here the legislative history is completely one-sided, and supports the State completely.

Notably, every legislator that spoke about the Act—both those voting for and against it—demonstrated that they understood the Act to have precisely the effect that ADOR and the Court of Appeals gave it. *See* Opening Br. 15-16, 55-56; Reply Br. 14-15. Thus, even if Plaintiffs' arguments managed to create any ambiguity, the legislative history resolves it against their position.

E. The Tax Court's "Unworkable" Reasoning Lacks Merit

Plaintiffs and the tax court bootstrap their interpretive arguments by contending that the State's interpretation is "unworkable."

Not so. Notably, the "parties involved did understand and implement the new system," belying the contention that the Act was "unworkable." Opinion ¶16. Indeed, ADOR had no trouble implementing it and Plaintiffs had no trouble calculating its effect *to the penny*. Moreover, the Court of Appeals "respectfully disagree[d] that allowing

the State to decline to pay excess desegregation expenses can be summarily deemed 'unworkable,' considering that for more than five years after the 1978 desegregation order was imposed, the State did not cover excess desegregation expenses." *Id.* ¶17.

There is thus nothing unworkable about the State not reimbursing TUSD for excess desegregation expenses. Ultimately, the problem for TUSD is not that the Act is "unworkable," but rather that TUSD simply does not like how it works.

II. The Act Presents No Genuine Constitutional Concerns

Finally, the Court of Appeals correctly held that implementing the Act to deny TUSD reimbursement for the expenses at issue is consistent with our Constitution. As an initial matter, the actual dispute here is about expenditures of State funds, which is one of the Legislature's core powers. Thus, "[t]he change at issue here … was a policy decision consistent with the legislature's power of the purse." Opinion ¶17. There is accordingly no constitutional issue with the effect of the Act as properly construed by ADOR and the Court of Appeals. *See* Opening Br. 38-41; Reply Br. 22-23.

The soundness of that holding is underscored by the fact that the

disputed "primary" and "secondary" terms do not appear anywhere in the text of the One Percent Limitation, and instead are purely creations of the Legislature. *See* Ariz. Const. art. 9, § 18; Opening Br. 41-45; Reply Br. 17-20. What the Legislature creates by statute it may also amend by statute. Opinion ¶14. True, the "primary" and "secondary" characterizations generally track the categories of the One Percent Limitation. But our Constitution does not require that they do so, and the Act does not run afoul of it by deviating from the general parallelism. Opening Br. 41-42; Reply Br. 20.

More fundamentally, the One Percent Limitation is a *restriction* on taxation by counties, not an *affirmative entitlement* to state funds. It inverts the One Percent Limitation's text and purpose to read it to compel additional spending by the State—which could only be paid by tax revenues (*i.e.*, additional taxes). Plaintiffs' attempt to wield a restriction on its taxing power to compel the State to tax and spend additional moneys contorts the One Percent Limitation beyond recognition.

CONCLUSION

For the foregoing reasons and those explained by the State's briefs in the Court of Appeals, this Court should affirm.

Respectfully submitted this 29th day of June, 2022.

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