IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

No. 1 CA-TX 20-0001

Arizona Tax Court
No. TX2018-000737

PIMA COUNTY AND
TUCSON UNIFIED SCHOOL DISTRICT NO. 1,

Plaintiffs/Appellees,

v.

STATE OF ARIZONA, ET AL.,

Defendants/Appellants.

ANSWERING BRIEF OF TUCSON UNIFIED SCHOOL DISTRICT NO. 1

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INTRODUCTION

Before the Court is an issue of pure statutory construction: the interpretation of A.R.S. § 15-972(E), which was designed to ensure compliance with article IX, section 18 of the Arizona Constitution. The constitutional provision provides that the total of certain *ad valorem* taxes levied against a property, by all taxing authorities collectively, cannot exceed 1% of the property's value (the "1% Limit"). Section 15-972(E) implements the 1% Limit in a way that effectively avoids depriving any local taxing authority of any revenue: if all of the taxes subject to the 1% Limit would exceed it, the county gives the taxpayer a credit for the excess and takes the credit against the school district levy, and the school district then receives "additional state aid for education" in the amount of that excess to make it whole. In 2018, Pima County did what it was supposed to do: it gave property owners credits totaling $8,113,188.62—the amount the subject property taxes exceeded the 1% Limit—and it reduced the school district levy by the amount of the credit. But, for the first time, the State refused to pay the "additional state aid for education" it owed to the school district, Tucson Unified School District No. 1 ("TUSD").

As its rationalization for not paying what it owed, the State looked to a 2018 amendment that added subsection (L), concerning desegregation expenses, to A.R.S. § 15-910, an irrelevant statute that addressed the school district's *budget* limits. The Arizona Tax Court thoroughly rejected the State's excuses, recognizing that section 15-910(L) does not mention, concern, or

affect the 1% Limit or additional state aid for education owed under section 15-972(E). Indeed, the States concedes that the school district's levy for desegregation expenses is subject to the 1% Limit. As the tax court recognized, the State's strained effort at statutory interpretation is "unworkable" and would cause a violation of the constitutional 1% Limit. This Court should affirm the tax court's well-reasoned decision.

STATEMENT OF THE CASE AND FACTS

A. Pima County calculates the taxes in excess of the constitutional 1% Limit and issues credits to taxpayers for over $8.1 million.

For tax year 2019, Pima County complied with the 1% Limit on property taxes in article IX, section 18 of the Arizona Constitution and its implementing legislation, A.R.S. § 15-972(E). Through its Tax Assembly System, the county added up all the *ad valorem* taxes subject to the 1% Limit that were levied by various taxing jurisdictions on parcels of residential property within the geographic boundaries of TUSD. (R.15 ¶ 8.) The total amount of levied taxes exceeded the 1% Limit by $8,113,188.62, and the county issued credits to, and thereby reduced the amount of its collections from, residential property owners in that amount—thus effectively reducing unilaterally the school district's levy. (R.15 ¶¶ 9-10.) Accordingly, under section 15-972(E), the State of Arizona owed that same amount in additional state aid for education for TUSD's benefit. (R.15 ¶ 10.) The county included that amount when it reported its state-aid calculations to the Arizona Department of Revenue, as required under section 15-972(F)-(G). (R.15 ¶ 10.)

Pima County included in its 1% Limit calculation the amount of the property tax levied by TUSD for desegregation expenses because, under the statutes (section 15-972(E) and the accompanying definitions in section 15-101), TUSD's levy was a "primary property tax"; the levy was not a "secondary property tax" because it was neither levied pursuant to an override election nor used to pay off bonds. (R.15 ¶¶ 5, 8.) TUSD currently operates under a desegregation structural injunction entered in 2013 by the U.S. District Court for the District of Arizona in two consolidated class actions. *See Fisher v. Tucson Unified Sch. Dist. No. 1*, No. 4:74-cv-00090-DCB; *Mendoza v. Tucson Unified Sch. Dist. No. 1*, No. 4:74-cv-00204-DCB. (R.15 ¶ 1.) For its 2018-2019 fiscal year, TUSD adopted a budget that included $63,711,047 for its expenses of complying with and continuing to implement activities mandated or permitted by the district court's injunction. (R.15, ¶ 2.) TUSD submitted its adopted budget to the Pima County Superintendent of Schools, and the superintendent submitted TUSD's property tax levies and rates to the Pima County Board of Supervisors. (R.15 ¶ 3.) TUSD's tax levy for desegregation expenses was broken out as a separate line item in Pima County's tax-levy resolution and was separately delineated in property owners' tax statements. (R.15 ¶¶ 4, 6.) On appeal, the State concedes that TUSD's desegregation levy was subject to the 1% Limit.

B. The State fails to compensate for the credits by paying TUSD that amount in additional state aid for education.

Despite Pima County's proper calculations and processing, the State did not pay the additional state aid for education mandated by section 15-972(E). On October 12, 2018, as required by section 15-972(H), the Arizona Department of Revenue reported its "additional state aid for education" calculations to the State Board of Education, but the amount reported for TUSD did not include *any* additional state aid under section 15-972(E). (R.15 ¶ 11.) The State still has not paid any such aid for fiscal year 2018-2019. (R.15 ¶ 12.)

C. The tax court correctly rules that the State breached its statutory obligations and orders the State to pay the $8.1 million in state aid for TUSD's benefit.

Because the State refused to pay the aid that it was obligated to pay, Pima County and TUSD filed suit in the Arizona Tax Court against the State. (R.1.) To ensure joinder of the parties needed for effective relief, the Department of Revenue, the State Department of Education, and the Superintendent of Public Instruction also were named as defendants. (R.1.) For purposes of simplicity, the defendants are referred to collectively as the "State."

On cross-motions for summary judgment, and after oral argument, the tax court granted summary judgment for Pima County and TUSD, and it denied the State's cross-motion. (R.34 at 4.) In its well-reasoned decision, the tax court held that TUSD's tax levy for desegregation expenses was subject

to the 1% Limit imposed by article IX, section 18 of the Arizona Constitution. (R.34 at 2-3.) A.R.S. § 15-972(E), through which the legislature met its constitutional obligation to provide a tax system consistent with the 1% Limit, *see* Ariz. Const. art. IX, § 18(8), "explicitly solved at least one potential problem—what to do if the eligible jurisdictions levied taxes in excess of 1%." (R.34 at 2.) In that situation, the court ruled, "three things happen," namely, the "addition step," the "reduction step," and the "pay-back step." (*Id.* at 2.)

Addition step: The county must determine whether the "total primary property taxes" to be levied by all eligible jurisdictions would exceed the 1% Limit. A.R.S. § 15-972(E).

Reduction step: If it does, the county must "apply a credit against the primary taxes due from each such parcel in the amount in excess" of 1%, and the credit reduces any taxes levied for "school purposes." *Id.*

Pay-back step: The State must provide "'additional state aid for education' equal to that amount of the reduction." (R.34 at 2 (quoting A.R.S. § 15-972(E)).)

The court concluded that TUSD's tax levy for desegregation expenses is a "primary property tax" subject to the 1% Limit. (R.34 at 203.) As the court reasoned, "primary property taxes" is a default category that is "specifically defined" for purposes of "the implementation formula" to include only *ad*

valorem taxes that are not "secondary property taxes." (R.34 at 2 (citing A.R.S. § 15-101(20)).) Section 15-101(25)'s definition of "secondary property taxes" does not include TUSD's desegregation levies because those secondary property taxes are limited to two categories that plainly do not apply: (1) taxes used to pay off "any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose"; and (2) amounts levied pursuant to an override election. (R.34 at 2 (quoting A.R.S. § 15-101(25)).)

The tax court rejected as "unworkable" the State's argument that A.R.S. § 15-910(L), adopted in 2018, changed this implementation formula. (R.34 at 3.) Section 15-910(L) provided that, for purposes of applying section 15-910(G)-(K)—*budgeting* provisions unrelated to the implementation formula—"[s]econdary property taxes levied pursuant to this subsection do not require voter approval." A.R.S. § 15-910(L). The court concluded that "[t]he only way to read § 15-972 in a manner consistent with the constitution, is to read it to include any tax subject to the 1% Limit in the calculation, regardless of the label applied … in A.R.S. § 15-910(L)." (R.34 at 4.) "The statutory label of 'secondary taxes' in the new A.R.S. § 15-910(L)" did not amend section 15-972(E) and "cannot trump the constitutional limitation on ad valorem taxes." (R.34 at 3.) Instead, the amendment "attempts to isolate the amounts levied by one of the eligible jurisdiction (school districts) which are used for one particular purpose (complying with desegregation orders)

into a different class, labeling them as 'secondary' tax, even though they do not fit the definition of that term under A.R.S. § 15-101(25)." (R.34 at 3.)

The tax court further reasoned that the State, by including desegregation levies in the "reduction step" but excluding them from the "pay-back step," would be "statutorily creat[ing]" a "fourth exemption" to article IX, section 18, which recognized only three exemptions from the 1% Limit. (R.34 at 3.) "At a minimum," the court recognized, "such a system would violate the constitutionally imposed requirement that the legislature 'provide by law a system of property taxation consistent with the provisions of this section.'" (R.34 at 3-4 (quoting Ariz. Const. art. IX, § 18(8)).) As a result, the court held that the State was required to pay additional state aid for education in the amount of Pima County's more than $8.1 million in taxpayer credits. (R.34 at 4.)

D. TUSD's desegregation efforts are immaterial to the tax issues.

While the State attempts to frame this appeal as a referendum on the sufficiency of TUSD's desegregation efforts (*see, e.g.*, Opening Br. 7-15, 25), this is not a fact-driven case, much less a desegregation case. As the tax court's ruling reflects, the present dispute turns on the interpretation of A.R.S. § 15-972(E), a tax statute of general application that does not even mention desegregation.

Nevertheless, three responses to the State's irrelevant attacks are warranted. First, TUSD has made extensive efforts to comply with a structural injunction so broad and detailed that the special master in the case

has repeatedly described it as "the most extensive set of remedies in a desegregation case ever."[1] Second, TUSD has strenuously argued in the federal case that it met the requirements for unitary status years ago—a position that TUSD again advances in a pending Ninth Circuit appeal[2]—and both the special master and the Department of Justice have encouraged the district court to find unitary status and terminate judicial supervision.[3]

Finally, the only *de jure* segregation found by the district court within TUSD was the pre-1951 segregation of African-American elementary-school students required *by Arizona statute* at the time, until TUSD's superintendent led the successful effort to repeal mandatory segregation in 1951—three years before *Brown v. Board of Education*, 347 U.S. 483 (1954). TUSD voluntarily desegregated its schools that fall.[4] The State's repeated assertions that local authorities "bear the financial consequences of … *their* operation of *de jure* segregated schools" (*e.g.*, Opening Br. 22) is thus legally irrelevant

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[1] *Fisher*, No. 4:74-cv-0090-DCB, ECF No. 2469, at 2:23-24 (D. Ariz. filed May 19, 2020.) This Court may take judicial notice of the special master's filing under Ariz. R. Evid. 201(b)(2).

[2] *Fisher v. Tucson Unified Sch. Dist. No. 1*, No. 20-16485 (9th Cir. filed Aug. 30, 2020).

[3] *Fisher*, No. 4:74-cv-00090-DCB, ECF No. 2469, at 53:9-10 (filed May 19, 2020) (special master); *id.*, ECF No. 2475, at 2:10-16 (filed June 16, 2020) (Department of Justice).

[4] These facts are laid out in the findings of fact and conclusions of law issued in 1978 by Judge William C. Frey in the desegregation case. For an online copy of the findings, see *Fisher v. Tucson Unified School Dist. No. 1*, No. 18-16982, ECF No. 31-5, 5-SER.1040-41, ¶¶ 11-20 (9th Cir. filed Jan. 28, 2020).

and historically inaccurate, as it was the State, and not the school district, that mandated the segregation that forms the basis for the desegregation decree.

E. Statement of jurisdiction

The tax court entered its final judgment for Pima County and TUSD on January 29, 2020. (R.54.) The State filed its notice of appeal on February 24, 2020. (R.55.) On this Court's suspension of the appeal and revesting of jurisdiction, the tax court entered its amended judgment with a Ariz. R. Civ. P. 54(c) certification on April 10, 2020. (R.62.) The tax court had jurisdiction of this action under A.R.S. § 12-163(A). This Court has jurisdiction of this appeal from the final judgment under A.R.S. §§ 12-2101(A)(1) and 12-170(C).

STATEMENT OF ISSUE PRESENTED

TUSD's tax levy for desegregation expenses is subject to the Arizona Constitution's 1% limit on residential property taxes. A.R.S. § 15-972(E) obligates Arizona counties to credit taxpayers for *all* taxes in excess of that 1% limit and reduce the school district levy by that amount, and then requires that "[s]uch excess amounts shall also be additional state aid for education for the school district." Did the tax court correctly rule that the statute obligates the State to pay such aid in the amount of the county's credits based on TUSD's desegregation levy?

SUMMARY OF ARGUMENT

Two things entirely dispose of this case: A.R.S. § 15-972(E) and the necessary conclusion—which the State now concedes—that TUSD's levy for desegregation expenses is subject to the 1% Limit on property taxes in article IX, section 18 of the Arizona Constitution. The Constitution recognizes three exceptions to the 1% Limit, two of which apply to school districts: taxes to pay off long-term debt, and taxes approved by voters in override elections. Section 15-972(E) fulfills the legislature's explicit constitutional obligation to implement the 1% Limit by creating, in conjunction with the statutory definitions in A.R.S. § 15-101(20) and (25), a distinction between "primary" and "secondary" property taxes that tracks the language of the constitutional exceptions to that limit. Thus, "primary" taxes are those subject to the 1% Limit, and "secondary" taxes are those excluded. As the State concedes, TUSD's desegregation levy is necessarily a "primary" tax under both the Constitution and its implementing statute, section 15-972(E), because it does not pay off long-term debt and was not approved by voters.

Accordingly, under the three-step process in section 15-972(E), Pima County properly included TUSD's levy both in totaling the property taxes of all jurisdictions and in issuing credits to taxpayers against TUSD's levy for the amount in excess of the 1% Limit. Thus, under the statute, "[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." A.R.S. § 15-972(E) (emphasis added). The State must give that aid to TUSD to

compensate it for the amount it lost because *all taxing jurisdictions together* exceeded the 1% Limit; it is undisputed that TUSD's own levies did not by themselves exceed the limit. If TUSD's desegregation levy were not treated for *all* purposes as a "primary" property tax under section 15-972(E)—including what the tax court called the "pay-back step" of that statute—then the constitutional 1% Limit would be violated.

Despite section 15-972(E)'s central and dispositive role, the State barely acknowledges that statute and the accompanying definitions of "primary property taxes" and "secondary property taxes" in section 15-101. Rather, the State relies on a 2018 amendment to A.R.S. § 15-910, a statute concerned with *budget* limits. Subsection (L), which was added to section 15-910, merely provides that the exemption of desegregation funds from budget limits under that statute's companion subsections applies only if the school district uses what subsection (L) calls "secondary property taxes" to fund the desegregation efforts, and taxes "levied pursuant to this subsection do not require voter approval." Section 15-910(L) does not purport to amend the definitions in section 15-101 or the three-step process in section 15-972(E), and it cannot be read to do so because the two statutes address different subjects: *budget* limits versus *tax* limits. The tax court charitably characterized the State's arguments based on section 15-910(L) as "unworkable"—in truth, they are utterly groundless. And the State's position cannot be salvaged by judicially rewriting section 15-190(L) to fulfill the personal expectations of individual legislators or nonlegislators when

the statutory text does not come close to achieving any such result. The tax court correctly decided this case in a well-reasoned ruling, and this Court should affirm its judgment.

ARGUMENT

I. The tax court correctly held that A.R.S. § 15-972(E) requires Pima County to include TUSD's desegregation levy in its 1% Limit calculations because it is a "primary property tax."

In a well-reasoned conclusion, the tax court correctly held that A.R.S. § 15-972(E) requires the State to pay additional state aid for education for the benefit of TUSD, for all amounts in excess of the constitutional 1% Limit on residential property taxes that Pima County credited to taxpayers, including TUSD's tax levy for desegregation expenses. The interpretation of statutes is a question of law that this Court reviews de novo. *State v. Watson*, 248 Ariz. 208, 216, ¶ 24 (App. 2020). This Court also reviews de novo the tax court's grant or denial of summary judgment. *Walgreen Ariz. Drug Co. v. Ariz. Dep't of Revenue*, 209 Ariz. 71, 72 (App. 2004). In light of that standard of review, much of the State's exhausting and misplaced critiques of the tax court's process and reasoning are simply irrelevant.

A. A.R.S. § 15-972(E) requires the State to pay TUSD "additional state aid for education" in the amount its levy was reduced because all jurisdictions' taxes exceeded the 1% Limit.

As the tax court appreciated, this case begins and ends with A.R.S. § 15-972(E). Yet the State's Opening Brief barely mentions that statute, even though a dispute over formulaic implementation of a constitutional tax

limitation would naturally turn on the statute that provides the implementation formula.

Section 15-972(E) was the legislature's answer for how to comply with the Arizona Constitution's 1% Limit on residential property taxes. Article IX, section 18 of the Arizona Constitution provides that "[t]he maximum amount of ad valorem taxes that may be collected from residential property in any tax year shall not exceed one per cent of the property's full cash value as limited." Ariz. Const. art. IX, § 18(1). Section 18 sets forth three—and only three—exceptions to the 1% Limit: (a) taxes levied to pay the principal, interest, and redemption charges for "bonded indebtedness" and certain other "long-term obligations"; (b) taxes levied by certain special-purpose districts "other than … school districts"; and (c) taxes levied "pursuant to an election to exceed a budget, expenditure or tax limitation." Ariz. Const. art. IX, § 18(2). On appeal, the State makes a crucial, unavoidable, and dispositive concession: *TUSD's desegregation levy is subject to the 1% Limit*. (*E.g.*, Opening Br. 48.)

The Arizona Constitution explicitly obligates the legislature to "provide by law a system of property taxation consistent with the provisions of" the 1% Limit. Ariz. Const. art. IX, § 18(8). A.R.S. § 15-972(E) is that "system." It provides a three-step formula for implementing the 1% Limit; that formula uses school-district levies and compensatory state education funding as the means for the State to assume financial responsibility for the overall tax burden in excess of the constitutional limit. In the first step—

which the tax court called the "addition step"—section 15-972(E) provides that, "[b]efore levying 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." A.R.S. § 15-972(E) (emphasis added). Here, Pima County calculated the excess tax load for property within TUSD's borders to be $8,113,188.62. (R.15 ¶¶ 8-9.) The State concedes that *TUSD's desegregation levy is subject to the 1% limit* and must be included in the calculation of taxes subject to that limit. (*E.g.*, Opening Br. 48.)

In the second step—which the tax court called the "reduction step"—section 15-972(E) provides that "[i]f 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." A.R.S. § 15-972(E). That is precisely what Pima County did: it issued credits to taxpayers in the total amount of $8,113,188.62. (R.15 ¶ 10.)

The third step—which the tax court named the "pay-back step"—is the State's responsibility. Section 15-972(E) mandates that "[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." A.R.S. § 15-972(E) (emphasis added). The statute provides for no discretion in whether the additional state aid for education is paid—the word "shall" makes payment

mandatory. And the statute provides for no alternative calculation of the additional state aid to be paid: it must be equal to "[s]uch excess amounts," that is, "the amount in excess of article IX, section 18, Constitution of Arizona." This statutory provision compensates the school district for taking the *sole* financial hit from the fact that *all of the taxing authorities' combined taxes* exceed the 1% Limit. It is undisputed that TUSD's own tax levies—including its desegregation levy—did not by themselves exceed the 1% Limit; it took all of the taxing authorities' levies *combined* to do so. (R.15 ¶ 9.) But the State did not fulfill its part of the legislative bargain—it did not provide "additional state aid for education" with respect to TUSD's desegregation levy, leaving the school district to bear the brunt. The State failed to provide the required state aid even though, as noted above, it concedes that Tucson's desegregation levy *is* subject to the constitutional 1% Limit.

The State's concession that TUSD's desegregation levy is subject to the 1% Limit is both unavoidable and dispositive. Because the desegregation levy must be accounted for in determining whether the 1% Limit in article IX, section 18 is exceeded, the levy must also be accounted for in the solution for that excess: the issuance of tax credits and the payment of additional state aid for education. The only existing framework for implementing the constitutional 1% Limit—A.R.S. § 15-972(E)—demands it. It is conceivable that the legislature could have chosen an entirely different framework for implementing the 1% Limit—such as making all of the taxing authorities that

collectively contributed to the excess be collectively responsible for the overage through a pro rata reduction in revenues—but the legislature has so far not done so. And the legislature certainly did not single out school districts and their desegregation programs as the only ones who would be left holding the bag.

Illustrating its broad refusal to address the terms of A.R.S. § 15-972(E), the State carefully avoids taking a position in its Opening Brief on whether Pima County was obligated, in the "reduction step," to provide residential taxpayers with a credit for the amount that *all* taxes subject to the 1% Limit (including the desegregation levy) exceeded the 1% Limit. Instead, the State focuses exclusively on arguing that it was not required, in the "pay-back step," to compensate with additional education aid for the effect on TUSD of the 1% Limit on the desegregation levy. Put differently, the State asserts the right to opt out of its obligations without explaining how that can be squared with Pima County's and TUSD's own obligations or the constitutional protections due to the taxpayers. Was TUSD supposed to find a way to pay its court-imposed desegregation expenses other than through a tax levy—bake sales, perhaps? The State's silence on this score is deafening.

B. The State's implicit interpretation of A.R.S. § 15-972(E) is untenable.

Although the State claims that the tax court "err[ed] in its interpretation of … A.R.S. § 15-972(E)" (Opening Br. 20), its Opening Brief never explicitly addresses how it believes section 15-972(E) should be

interpreted. The State's derogation of TUSD's desegregation efforts and expenses, and its failure to offer a general explanation of the statute, suggest that it views desegregation levies as an exception to any general rule. In other words, section 15-972(E) must be interpreted as requiring the county to calculate all taxes that exceed the 1% Limit *other than desegregation taxes*, give residential taxpayers credits for amounts that exceed the 1% Limit *other than desegregation taxes*, and receive additional aid for education *other than for the desegregation taxes*. Any interpretation that would treat desegregation levies disparately would run afoul of Title 15's definitional section, be absurd, contravene the purpose and intent of section 15-972(E), and lead to unconstitutional results.

1. Removing desegregation levies from the 1% Limit process would ignore the statutory definitions in A.R.S. § 15-101.

Taking desegregation levies out of section 15-972(E)'s implementation framework for the 1% Limit could not be reconciled with the explicit definitions in Title 15. The implementation provision for the 1% Limit obligates the county to "determine whether the total *primary property taxes* to be levied for all taxing jurisdictions on each parcel of residential property … violate article IX, section 18, Constitution of Arizona." A.R.S. § 15-972(E) (emphasis added). While phrase "primary property taxes" is not defined in section 15-972(E), it is defined in A.R.S. § 15-101, the definitional statute that applies to Title 15 as a whole—including section 15-972(E). In a catch-all or

default manner, "primary property taxes" is defined as "all ad valorem taxes except for secondary property taxes." A.R.S. § 15-101(20). On the other hand, "secondary property taxes" is the carve-out, narrowly defined as "ad valorem taxes used to pay the principal of and the interest and redemption charges on any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose by a school district or a community college district and amounts levied pursuant to an election to exceed a budget, expenditure or tax limitation." A.R.S. § 15-101(25). Bringing these complementary definitions together, "primary property taxes" are "all ad valorem taxes except for" "ad valorem taxes used to pay … any bonded indebtedness or other … long-term obligation … for a specific purpose … and amounts levied pursuant to an [override] election."

The language used to define "primary property taxes" and "secondary property taxes" in section 15-101 was taken almost verbatim from the 1% Limit provisions of article IX, section 18 of the Arizona Constitution. Under those constitutional provisions, the 1% Limit applies to all *ad valorem* taxes *except*

> (a) Ad valorem taxes or special assessments levied to pay the principal of and interest and redemption charges on bonded indebtedness or other lawful long-term obligations issued or incurred for a specific purpose.
>
> (b) Ad valorem taxes or assessments levied by or for property improvement assessment districts, improvement districts and other special purpose districts other than counties, cities, towns, school districts and community college districts.

(c) Ad valorem taxes levied pursuant to an election to exceed a budget, expenditure or tax limitation.

Ariz. Const. art. IX, § 18(2). Because Title 15 concerns education, the second exception to the 1% Limit for districts other than "school districts and community college districts" would not be relevant. The other two exceptions were used almost verbatim to define "secondary property taxes" in A.R.S. § 15-101(25). In short, A.R.S. § 15-101 defines "secondary property taxes" as taxes that *are not* subject to the 1% Limit, and it defines "primary property taxes" as taxes that *are* subject to the 1% Limit. Stated another way, no tax that is subject to the 1% Limit could *ever* fall within the definition of "secondary property taxes" in A.R.S. § 15-101.

These definitions are controlling. "It is well settled that where a statute expressly defines certain words and terms used in the statute the court is bound by the legislative definition in all cases where the rights of the parties litigant are based upon that statute." *Pima County v. Sch. Dist. No. One*, 78 Ariz. 250, 252 (1954). In fact, "the tendency of modern decisions … is to give greater effect to" express legislative definitions such as those found in definitional sections. 1A *Sutherland Statutory Construction* § 27:2 (7th ed. 2019). "Definitions are integral to the statutory scheme and of the highest value to determine legislative intent. To ignore a definition section is to refuse to give legal effect to a part of the statutory law of the state." *Id.* Sutherland makes clear the internal incoherence of any proposed interpretation that would subordinate statutory definitions to other types of

provisions: "To hold that the 'words of the act' control the definition section is to declare that legislative intent is exactly the opposite of that declared by the legislature." *Id.*

Applying the section 15-101's effective definition of "primary property taxes" as "taxes subject to the 1% Limit" to section 15-972(E) makes sense. Substituting that phrase for "primary property taxes," as well as "1% Limit" for the constitutional reference, would produce a consistent and logical reading of section 15-972(E):

> Before levying taxes for school purposes, the board of supervisors shall determine whether the total [taxes subject to the 1% Limit] to be levied for all taxing jurisdictions on each parcel of residential property, in lieu of this subsection, violate [the 1% Limit]…. If the board of supervisors determines that such a situation exists, the board shall apply a credit against the [taxes subject to the 1% Limit] due from each such parcel in the amount in excess of [the 1% Limit]. 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). This fulfills the legislature purpose in enacting A.R.S. § 15-972(E) to create a statutory scheme for ensuring constitutional compliance with the 1% Limit by providing that any taxes that are subject to and exceed the 1% Limit are credited to the taxpayers, and that credit is reimbursed by the state. That clearly apparent intent, along with the express definition in the definitional section, must be given effect. "In the interpretation of a statute the primary duty of the Court is to give effect to

the legislative intent." *State ex rel. Flournoy v. Mangum*, 113 Ariz. 151, 152 (1976). The Arizona Supreme Court explained, "To arrive at that intention we look to the words, context, subject matter, effects and consequences, reason, and spirit of the law. In interpreting a statute a sensible construction should be given which will accomplish the legislative intent and purpose and which will avoid an absurd conclusion or result." *Id.* (citation omitted).

Neither A.R.S. § 15-972(E) (the statute being interpreted) nor A.R.S. § 15-101 (the statute that provides the only definition of the term at issue) were amended by the Legislature. There is no reason to conclude that the interpretation or operation of section 15-972(E) has changed at all. While the State argued before the tax court that these statutes were impliedly amended by the new A.R.S. § 15-910(L), that strained and unsupported argument fails in light of the "words, context, subject matter, effects and consequences, reason, and spirit of the law" that must govern, *Mangum*, 113 Ariz. at 152, particularly given that implied modification is disfavored under Arizona law, *Pijanowski v. Yuma Cty.*, 202 Ariz. 260, 263, ¶ 14 (App. 2002).

2. The State's interpretation would cause absurd results.

The State erroneously argues that A.R.S. § 15-910(L) created a *new* definition of "secondary property taxes" that includes taxes for desegregation purposes that "do not require voter approval," and that this new definition must be applied to A.R.S. § 15-972(E), with the result that TUSD's desegregation levies may not be considered under section 15-972(E). There are multiple flaws with the State's argument. First, "secondary

property taxes" is not actually defined in section 15-910(L), and there *is* no new definition to incorporate into section 15-972(E). Second, even if section 15-910(L) had defined "secondary property taxes," that term does not appear in section 15-972(E) because such taxes are not subject to the 1% Limit, and there would be no reason to incorporate any such definition. The only relevant term in section 15-972(E) is "*primary* property taxes," which is defined only in section 15-101, whose definitions therefore should be followed. *See Pima Cty.*, 78 Ariz. at 252.

Even if section 15-910(L) had defined "primary property taxes," there would be no reason to incorporate *that* definition into section 15-972(E) rather than using the definition in Title 15's definitional section. Section 15-101, by its terms, applies to *all* of Title 15. By contrast, section 15-910(L) does not state that any definitions that may be included therein are intended to apply outside of that specific subsection. In similar circumstances, courts do not assume that a definition found only in one section applies to the act as a whole. *See, e.g.*, *In re Estate of Poole*, 799 N.E.2d 250, 256 (Ill. 2003) ("If the legislature would have intended the term 'eligible parent' [defined in a specific statute] to be used throughout the Probate Act, it would have included it within the definition sections of the Act."); *Blanco v. United Comb & Novelty Corp.*, No. CIV.A.13-10829, 2013 WL 5755482, at *2 n.3 (D. Mass. Oct. 22, 2013) ("Where, as here, the legislature carefully defined a term in one section and defined it differently in another, I can assume that the legislature did not intend for the term 'employer' to have a general meaning

for all portions of the [act]; thus, I decline to read the definition of 'employer' from chapters 149 or 151A into chapter 151.").

A more fundamental problem with the State's interpretation is revealed by the State's ineluctable *concession* that desegregation taxes such as the one at issue *are subject to the 1% Limit*, even though, according to the State, they are now labeled in section 15-910(L) as "secondary property taxes." (*E.g.*, Opening Br. 48.) The State suggests that section 15-972(E) requires that desegregation taxes be *ignored* in calculating and addressing amounts that exceed the 1% Limit. This interpretation would lead to absurd results because it would *not* ensure constitutional compliance with the 1% Limit. Wherever the 1% Limit is exceeded and there is *any* amount of desegregation taxes, the State's interpretation would require a completely futile exercise: any violation of the 1% Limit would not be cured—a violation likely would not even be identified—and residential taxpayers would not be given credits to cure the 1% Limit violation. There would be no reason for violations to be calculated, credits to be issued, and reimbursement by additional aid for education to be provided *if the violation of the 1% Limit would remain uncured*. "In interpreting statutes, courts will avoid an interpretation that leads to an absurdity because an absurdity could not have been contemplated by the legislature." *State v. Kerr*, 142 Ariz. 426, 433 (App. 1984); s*ee also Mangum*, 113 Ariz. at 152 ("In interpreting a statute a sensible construction should be given which will accomplish the legislative intent and purpose and which will avoid an absurd conclusion or result.").

3. The State's interpretation would frustrate the purpose of A.R.S. § 15-972(E).

Despite arguing that the legislature's intent must be given effect, the State proposes an interpretation of A.R.S. § 15-972(E) that would frustrate the purpose and intent of that statute. Again, the purpose of section 15-972(E) was to provide a framework for ensuring constitutional compliance with the 1% Limit. The Arizona Constitution *obligated* the legislature to "provide by law a system of property taxation consistent with the provisions of" the 1% Limit, Ariz. Const. art. IX, § 18(8), and the legislature did so with section 15-972(E). That section is the only statute that resolves the dilemma created when multiple taxing authorities' individual levies add up to more than the 1% Limit. Without it, there would be no apparent principle or mechanism for picking which taxing authority's levy to reduce, and how that selection would be made. The statute resolves the dilemma by providing that *school districts'* levies (as opposed to levies by community college districts, counties, or municipalities) are reduced to the extent necessary so that taxes as a whole do not exceed the 1% Limit, and by also providing that the State is responsible for that reduction by paying additional state aid for education in the exact amount of the reduction in the school district's levy. Section 15-972(E) applies any time there is an overage among all the taxing districts, not just in desegregation situations. The only way that the section will work in *all* situations is if it includes all taxes subject to the 1% Limit.

The State would have this Court hold that, *without amending section 15-972(E) at all*, the legislature nullified the important purpose and effect of that provision. Such an interpretation would be improper. *See, e.g.*, *Hernandez v. Lynch*, 216 Ariz. 469, 473, ¶ 13 (App. 2007) ("Interpreting Proposition 100 as [suggested] would frustrate its purpose and lead to absurd and potentially unconstitutional results.").

4. The application of A.R.S. § 15-972(E) that the State suggests would cause unconstitutional results.

Finally, the State's interpretation is improper because it would cause unconstitutional results. As addressed above, if A.R.S. § 15-972(E) were applied as the State suggests it should be, any instance where both (a) total levies exceeded the 1% Limit and (b) any portion of those levies consisted of desegregation funding *would not be brought into constitutional compliance*. The county would be responsible for bringing only *nondesegregation* funding within the 1% Limit. Because (as the State concedes) desegregation funding is subject to the 1% Limit, the *total* levies subject to the 1% Limit would remain in violation of that constitutional limit even after application of section 15-972(E) because it is the only statute designed and intended to fix and prevent such constitutional violations. Statutory interpretations that could cause unconstitutional results should be avoided, even if the statute itself would not facially be unconstitutional. *See, e.g.*, *Lo v. Lee*, 231 Ariz. 531, 534, ¶ 11 (App. 2012) ("Although we do not suggest [the proposed interpretation] would render the statute facially unconstitutional, … [w]e decline to

interpret the statute in such a way as to invite constitutional attack."). The Court should not adopt such an interpretation of section 15-972(E), particularly given that the statute was plainly designed to *ensure* constitutional compliance.

The State argues at length that the tax court found A.R.S. § 15-910(L) to be unconstitutional despite Pima County and TUSD's not disputing its constitutionality. (Opening Br. 23, 39-49.) It is true that they do not contend that section 15-910(L) violates the Arizona Constitution—but neither did the tax court. Rather, the tax court concluded—and this Court should, as well—that it is the *application* of section 15-910(L) to section 15-972(E) urged by the *State* which would have unconstitutional results. The tax court properly applied the doctrine of constitutional avoidance and reached the only interpretation that will not raise such issues of constitutionality.

The State's argument that any unconstitutional provisions in section 15-910(L) should be severed (Opening Br. 48-50) is similarly misguided because there are no unconstitutional provisions. The problem is not section 15-910(L) or its language, but the State's attempt to make that statute do something it was not intended or drafted to do.

II. The State's focus on A.R.S. § 15-910(L) is irrelevant because that statute is not at issue and, in any event, does not affect the interpretation of A.R.S. § 15-972(E).

Rather than actually addressing how A.R.S. § 15-972(E) must be interpreted, the State focuses instead on the meaning of a separate statute,

A.R.S. § 15-910(L). The State argues that this separate statute should be effectively incorporated into section 15-972(E) and that, through amending section 15-910 to add subsection (L), the legislature also amended section 15-972(E). As shown above, and as the tax court concluded, there is only one proper interpretation of section 15-972(E); it is not the "unworkable" one suggested by the State, and it does not depend on section 15-910(L). The State's arguments based on section 15-910(L) also fail for several other reasons set forth below.

A. As the tax court concluded, looking to A.R.S. § 15-910(L) is "unworkable" for the purposes advocated by the State.

The State's invocation of section 15-910(L) to impliedly amend the statutory definition of "primary property taxes" used in section 15-972(E) mixes statutes with wholly different purposes and contexts. Section 15-972(E) implements constitutional *property tax* limits; section 15-910(L) concerns school districts' *budget* limits. The State is grasping at section 15-910(L) because it uses the words "secondary property taxes," even though it is in an entirely unrelated setting.

By its terms, section 15-910(L) conditions the application of its companion subsections (G) through (K). Under those subsections, the cost of operating a court-ordered desegregation program is exempt from the budget limits that otherwise apply to school districts. In 2018, Senate Bill 1529 added the new subsection (L), which provides that the budget limits do not apply *only* if the school district uses "secondary property taxes" to fund the

desegregation expenses, and those taxes "levied pursuant to this subsection do not require voter approval":

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

A.R.S. § 15-910(L). The State argues that even though section 15-910(L) addressed only budget limits, it modified *all* of Title 15 so that desegregation taxes are now outside the scope of the tax limits implemented by section 15-972(E). Aside from being "unworkable," as the tax court concluded, the State's argument attempts to make a tail wag a *different* dog.

Moreover, the State's argument focuses on what a tax is called, rather than whether, nomenclature aside, the statute as the State reinterprets it would fulfill the legislature's constitutional obligation to implement the 1% Limit. The State argues that, since section 15-972(E) gives taxpayers a credit in the amount by which the "total *primary* property taxes to be levied for all taxing jurisdictions on each parcel of residential property" would otherwise violate the constitutional 1% Limit, labeling a desegregation levy a

"secondary" for purposes of section 15-910(L) lowers the total "primary" taxes to below the 1% Limit, obviating the need for the taxpayer credit and corresponding additional state aid for education provided by section 15-972(E).

The constitutional problem with this argument is that article IX, section 18 does not limit "primary property taxes" or "secondary property taxes"—it limits "property taxes." The distinction between "primary" and "secondary" property taxes was created by Title 15, through the definitions in sections 15-101(20) and (25), as part of the statutory scheme in section 15-972(E) to implement that constitutional provision. Recategorizing a desegregation levy would not change the underlying constitutional 1% Limit; it would simply mean that the taxpayers would have to pay more taxes than the 1% Limit permits because they would no longer receive a credit for the excess of "primary" taxes. The State would avoid paying additional state aid for education aid at the price of gutting the tax limitation the aid served to implement.

The statutory problem with the State's arguments is that section 15-910(L) cannot be read as amending the section 15-101 definitions of "primary" and "secondary" taxes because the two are fundamentally irreconcilable. A.R.S. § 15-101(25) tracks the constitutional exemptions from the 1% Limit, defining "secondary property taxes" as *ad valorem* taxes that are either (a) used to pay off an educational district's "bonded indebtedness or other lawful long-term obligations" or (b) "levied pursuant to an election

to exceed a budget, expenditure or tax limitation." Section 15-910(L) purports to recognize, for purposes of budget limits, a new kind of "secondary property taxes" that are neither used to pay off bonds nor approved by voters in an override election. This conflicts not only with the definition of "secondary property tax" in section 15-101(25), but also with the constitutional framework that the definition matches and implements.

As well, there is no textual foundation for the State's suggestion that section 15-910(L) impliedly amended either section 15-910(25)'s definition or section 15-972(E)'s formula. Section 15-910(L) does not address tax limits or taxpayer credits at all, and it certainly does not address state aid for education. The State's argument that section 15-910(L) is a "specific" provision that governs over the "general" provision of section 15-972(E) (Opening Br. 33) overlooks that "specific" and "general" have no meaning here: instead of overlapping, the two statutes address completely different topics.

Instead, whatever section 15-910(L) achieves with respect to budget limits, it stands alongside, and does not trump, the statutory definition used in implementing the constitutional tax limits. As the Arizona Supreme Court admonished in *Pima County v. School District No. One*, "No objection can be made because the statutory definition differ from definitions of the same terms in other statutes, *or in other parts of the same statute*." 78 Ariz. at 252 (quotation omitted; emphasis added). In *Pima County*, the "same statute" the court referenced was an *article* of the Arizona Code, not just a single section.

"Statutory construction requires that the provisions of a statute be read and construed in context with the related provisions and in light of its place in the statutory scheme." *Grant v. Bd. of Regents of Univs. & State Colls. of Ariz.*, 133 Ariz. 527, 529 (1982). "If ambiguity exists, we apply secondary principles of statutory construction and consider other factors, including the history, context, spirit and purpose of the law, to glean legislative intent. In so doing, we view the statute in the context of other related statutes and the overall statutory scheme." *State ex rel. Ariz. Registrar of Contractors v. Johnston*, 222 Ariz. 353, 355, ¶ 5 (App. 2009) (citations omitted). The State argues that section 15-910(L) must be considered in "the Act's" context (Opening Br. 53-55), but the interpretive context is not Senate Bill 1529 (which the State calls the "Act"), but the constitutionally mandated "statutory scheme" in which the enacted amendments are found. *See Grant*, 133 Ariz. at 529. Section 15-910(L)'s use of the phrase "secondary property taxes" is inconsistent with its use in the rest of Title 15, but it expressly applies only "to this subsection" and has no consequence for unrelated aspects of the overall tax system, particularly because implied modification is disfavored under Arizona law. *Pijanowski*, 202 Ariz. at 263, ¶ 14.

B. The purported goal of some legislators behind A.R.S. § 15-910(L) is irrelevant because that goal was not achieved, and it is not this Court's place to cause it to happen.

The Opening Brief places much emphasis on the purported intent of certain legislators who drafted or commented on the bill that created A.R.S.

§ 15-910(L). (*E.g.*, Opening Br. 15-16.) These statements are irrelevant for three reasons. First, the remarks of individual legislators are of little weight in any circumstances. *See, e.g.*, *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204, ¶ 13 (App. 2007) (statements of individual legislators are "'entitled to little, if any, weight'") (quoting *Coal. for Clean Air v. S. Cal. Edison Co.*, 971 F.2d 219, 227 (9th Cir. 1992)); *City of Tucson v. Woods*, 191 Ariz. 523, 528 (1997) ("[A] single member of the legislature is not able to testify regarding the intent of the legislature in passing a law."). "In the interpretation of legislation, we aspire to be 'a nation of laws, not men.' This means (1) giving effect to the text that lawmakers have adopted and that people are entitled to rely on, and (2) giving *no* effect to lawmakers' unenacted desires." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 29 (2012).

The statements of *non-legislators* are even less relevant. The State repeatedly cites a comment by a Pima County administrator about what S.B. 1529 "appears to have been an attempt" to do (Opening Br. 16, 38, 55), but the State fails to show how public speculation about what some legislators tried (and failed) to accomplish can possibly be relevant to statutory interpretation.

Second, even if certain legislators hoped to eliminate the State's obligation to provide additional aid for education with respect to desegregation levies when the 1% Limit is exceeded— which may, in fact, have been the goal of some supporters of section 15-910(L)—that goal simply was not achieved. There was no amendment to section 15-972(E), which

mandates the situations in which additional state aid for education "shall" be provided. There also was no amendment to the definitions in section 15-101(20) and (25), on which section 15-972(E) relies. As a consequence, there was no change to the State's obligation to provide additional state aid when total taxes exceed the 1% Limit, even when some of those taxes are for desegregation expenses.

Third, statements about legislators' putative intent are irrelevant because it is not the Court's role to rewrite sections 15-101 and 15-972(E) to achieve the claimed but unexpressed purposes of section 15-910(L)—a provision about budget limits, not tax limits. The Court can neither "rewrite a statute under the guise of divining legislative intent" nor "amend a statute to correct … legislative oversight." *In re Martin M.*, 223 Ariz. 244, 247, ¶ 9 (App. 2009). "It is the rule of statutory construction that courts will not read into a statute something which is not within the express manifest intention of the Legislature as *gathered from the statute itself*, and similarly the court will not inflate, expand, stretch or extend the statute to matters not falling within its expressed provisions." *Patches v. Indus. Comm'n*, 220 Ariz. 179, 182, ¶ 10 (App. 2009) (emphasis added).

If the legislature wishes to amend sections 15-101 and 15-972(E) to eliminate state funding of additional aid for education when desegregation levies are being sacrificed to comply with the 1% Limit, the legislature must do so—if it *can* do so constitutionally, which is to be doubted. "Any extension of the reach of the statute to achieve a desired outcome must be

accomplished by the legislature, not the courts." *Patches*, 220 Ariz. at 182, ¶ 10; *see also In re Martin M.*, 223 Ariz. at 247, ¶ 9 ("[I]t is the legislature's place to correct any such oversight."). In the more than a year since the tax court's decision, the legislature has not attempted any such changes, despite the State's recognition that it "would probably have been better." (Opening Br. 34.) The courts cannot and should not do it.

C. The tax court's interpretation is not barred by the canon against superfluousness.

The State asserts that the tax court's interpretation of A.R.S. § 15-972(E) renders A.R.S. § 15-910(L) mere surplusage in violation of the canon against superfluousness. (Opening Br. 28-30.) For at least two reasons, that is not true. First, the canon against superfluousness is not as "cardinal" and inviolable as the State asserts. As the U.S. Supreme Court recognized, "our hesitancy to construe statutes to render language superfluous does not require us to avoid surplusage at all costs." *United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007) This Court should not adopt an interpretation of section 15-972(E) that would conflict with its text, conflict with its purpose, and produce unconstitutional results merely to avoid purported surplusage in section 15-910(L). Certainly this Court is not required to contort multiple statutes to *create* meaning for section 15-910(L).

Second, the interpretation of section 15-972(E) does not render section 15-910(L) surplusage at all.[5] The addition of that subsection clearly effected a change: a school district may continue to avoid budget limits that would otherwise apply to desegregation spending if the amounts budgeted for desegregation purposes come from a new kind of "secondary" property tax that does not require voter approval and that is a separately delineated line item on property owners' tax bills. TUSD complied with this provision: it levied a "secondary" tax for desegregation expenses that was separately delineated as such on tax statements; TUSD's levy for desegregation expenses previously had been included in a single line with the principal TUSD levy. That this levy was "secondary" for purposes of the budget limit but "primary" for purposes of the 1% Limit on taxes does not deprive the provision of its intended effect or make the "secondary property tax" designation mere surplusage. Giving text meaning in its specific statutory context does not require importing it into unrelated sections, particularly where, as here, that would create constitutional infirmities.

CONCLUSION

This Court should affirm the judgment of the tax court.

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[5] The State's hyperbolic insistence that "the *entire Act*" was rendered a "nullity" with "no effect whatsoever" is patently untrue. (Opening Br. 29.) The State uses "the Act" to mean S.B. 1529, and that bill contained amendments to several statutory sections and laws beyond section 15-910(L). It is undisputable that none of those other provisions were even touched by the tax court's interpretation of section 15-972(E).

NOTICE UNDER ARCAP 21(A)

Pima County and TUSD each intend to seek their attorneys' fees under A.R.S. § 12-348.01.

DATED this 8th day of September, 2020.

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