



MEMORANDUM

Date: August 5, 2015

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Additional State Aid to Education Litigation Related to State of Arizona Budget Transfers to Pima County**

Attached is the August 3, 2015 complaint filed in Maricopa County Superior Court.

The complaint follows previous communication with the Board of Supervisors regarding this litigation. I indicated that if the Supreme Court declined to take jurisdiction, we would subsequently file in Maricopa's Superior Court. This filing occurred on August 3, 2015, and the complaint is self-explanatory.

Attachment

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400

1 Joseph A. Kanefield (015838)
kanefieldj@ballardspahr.com
2 Heather T. Horrocks (029190)
horrocksh@ballardspahr.com
3 BALLARD SPAHR LLP
4 1 East Washington Street, Suite 2300
5 Phoenix, AZ 85004-2555
6 Telephone: 602.798.5400
7 Facsimile: 602.798.5595
Attorneys for Plaintiffs

8 BARBARA LAWALL
PIMA COUNTY ATTORNEY
9 Regina L. Nassen (014574)
regina.nassen@pcao.pima.gov
10 Lorna M. Rhoades (031833)
lorna.rhoades@pcao.pima.gov
11 32 N. Stone, Suite 2100
12 Tucson, Arizona 85701
13 Firm No. 00069000
Attorneys for Pima County

14
15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

16 IN AND FOR THE COUNTY OF MARICOPA

17
18 PIMA COUNTY, a body politic;
CLARENCE DOWNY KLINEFELTER,

19 Plaintiffs,

20 vs.

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22 STATE OF ARIZONA; PROPERTY
23 TAX OVERSIGHT COMMISSION;
24 DAVID RABER, JIM BRODNAX,
25 JEFF LINDSEY, KEVIN MCCARTHY,
and FRED STILES, in their official
26 capacities as Members of the
PROPERTY TAX OVERSIGHT
27 COMMISSION,

28 Defendants.

CASE NO.

**VERIFIED COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND
SPECIAL ACTION RELIEF**

(Assigned to the Hon.)

1 For their Verified Complaint for Declaratory, Injunctive, and Special Action
2 Relief, Plaintiffs allege as follows:

3 **PARTIES**

4 1. Plaintiff Pima County is a body politic organized in accordance with
5 Article 12, Section 1 of the Arizona Constitution. Pima County is subject to
6 determinations by the Property Tax Oversight Commission (“PTOC”) when PTOC
7 enforces or otherwise administers A.R.S. § 15-972(K) (“Section K”).

8 2. Plaintiff Clarence Downy Klinefelter is a resident of Pima County who
9 lives at 2141 North Ajo Gila Bend Highway, Ajo, Arizona 85321. Mr. Klinefelter’s
10 residential property is located in the Ajo Unified School District, over 100 miles from the
11 Tucson Unified School District (“TUSD”). Under Section K, property taxes
12 Mr. Klinefelter pays to Pima County will be paid to TUSD.

13 3. Defendant State of Arizona is a body politic. Defendant PTOC is charged
14 with administering the taxing scheme set forth in Section K. Defendants David Raber,
15 Jim Brodnax, Jeff Lindsey, Kevin McCarthy, and Fred Stiles are the members of PTOC
16 and are named in their official capacities.

17 **JURISDICTION AND VENUE**

18 4. This Court has jurisdiction over actions seeking declaratory, injunctive, and
19 special action relief pursuant to Article 6, Section 14 of the Arizona Constitution,
20 A.R.S. § 12-123, A.R.S. §§ 12-1801 *et seq.*, A.R.S. §§ 12-1831 *et seq.*, and the Arizona
21 Rules of Procedure for Special Actions.

22 5. A justiciable controversy exists between Plaintiffs and Defendants because
23 Section K became effective on July 3, 2015. On information and belief, PTOC will meet
24 and determine amounts of money that Pima County must pay to TUSD for Fiscal Year
25 2016, which began on July 1, 2015, and for subsequent fiscal years, even though
26 Section K is unconstitutional.

1 12. Section 15-972 provides two types of tax relief for Class 3 property owners.
2 First, a certain portion of the funding that would be provided by application of the
3 otherwise-applicable school district tax rate to Class 3 properties in the district is shifted
4 to the State (the “Homeowner Rebate Adjustment”) and provided by the State to the
5 school districts as additional state aid to education. A.R.S. § 15-972(B)-(D).

6 13. If the aggregate primary property tax rate for a parcel of Class 3 property
7 still exceeds the One Percent Cap after the Homeowner Rebate Adjustment, the property
8 owners get an additional credit on their tax bill for the excess (the “One Percent Cap
9 Adjustment”), and the district’s tax revenues are once again correspondingly reduced.
10 A.R.S. § 15-972(E). Since 1980, when the One Percent Cap was passed, the State has
11 paid the school district the amount by which its tax revenues are reduced by the One
12 Percent Cap Adjustment as additional state aid to education (the “One Percent Cap
13 ASAE”).

14 14. On March 9, 2015, the Legislature enacted and transmitted to the Governor
15 thirteen bills comprising the State’s fiscal year 2016 operating budget, including
16 SB 1476. Section 7 of SB 1476 added Section K.

17 15. Section K limits the state’s funding of the One Percent Cap ASAE to
18 \$1 million per county. For any remaining shortfall, PTOC shall “determine the
19 proportion of the violation” of the One Percent Cap that is attributable to each taxing
20 jurisdiction within the affected school district or districts. Based on that determination,
21 PTOC “shall determine an amount that each taxing jurisdiction within the affected school
22 district or districts shall transfer to the affected school district or districts”

23 16. When allocating proportionate liability for local jurisdictions collectively
24 exceeding the One Percent Cap, PTOC must determine if a local jurisdiction has a tax
25 rate at or below its “peer jurisdictions,” a term that Section K does not define or explain.
26 If a jurisdiction has a tax rate below its peer jurisdictions, then its proportion of the
27 constitutional violation is zero, and it does not have to transfer funds.

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1 17. Based on Joint Legislative Budget Committee estimates, the \$1 million cap
2 means that Pima County, the City of South Tucson, the City of Tucson, and Pima
3 Community College District, will be required to provide TUSD with approximately \$17.3
4 million in fiscal year 2016. San Fernando and Altar Valley school districts, which are in
5 Pima County, are also expected to qualify for a small amount of One Percent Cap ASAE.

6 **COUNT I – VIOLATION OF ARTICLE 9, SECTION 22 OF THE ARIZONA**
7 **CONSTITUTION**

8 18. Plaintiffs incorporate the preceding paragraphs herein.

9 19. Article 9, Section 22 of the Arizona Constitution imposes a two-thirds
10 supermajority requirement in both houses of the Legislature for any act that provides for
11 a net increase in state revenues, as described in Section 22(B), unless the act qualifies for
12 one of the exceptions in Section 22(C).

13 20. Section K satisfies either Section 22(B)(1) or (5) because it imposes a new
14 tax or assessment. It requires counties and other local jurisdictions whose boundaries
15 overlap with an “affected school district” to pay to that school district an amount of
16 money determined by PTOC. That money must be obtained by the paying jurisdictions
17 from their taxpayers.

18 21. In addition, Section 22(B)(7) prevents a simple majority of the Legislature
19 from circumventing the supermajority requirement through the expedient of changing the
20 allocation of tax revenues that would otherwise flow to counties and cities.

21 22. Section K plainly changes the allocation of property tax revenue between
22 the State and Pima County. Previously, the County received the revenue from the
23 primary property tax it levied, even if that tax, when combined with the tax rate of other
24 local jurisdictions, exceeded the One Percent Cap. Now, the County must pay a portion
25 (determined by PTOC) of those property-tax revenues to TUSD. Simply put, Section K
26 reduces the County’s allocation of the property tax it levies, and the State avoids paying
27 moneys it previously paid to TUSD to comply with constitutional provisions related to
28 property taxes and school funding.

1 23. Section K does not fall within any exception in Section 22(C).

2 24. SB 1476 was passed by only a simple majority in both houses of the
3 Legislature.

4 **COUNT II – VIOLATION OF SINGLE-SUBJECT RULE**

5 25. Plaintiffs incorporate the preceding paragraphs herein.

6 26. “Every act shall embrace but one subject and matters properly connected
7 therewith, which subject shall be expressed in the title.” Ariz. Const. art. IV, pt. 2, § 13.
8 The title of an act must not be so meager as to mislead or tend to avert inquiry as to the
9 context thereof. Moreover, it must be of such character as fairly to apprise legislators,
10 and the public in general, of the subject matter of the legislation, and of the interests that
11 are or may be affected thereby, and to put anyone having an interest in the subject matter
12 on inquiry.

13 27. SB 1476’s title provides in relevant part: “An act . . . amending section[]
14 . . . 15-972 . . . ; relating to kindergarten through grade twelve budget reconciliation.”
15 This title does not put the Legislature or the interested members of the public on notice
16 that SB 1476 (through Section K) imposes a new requirement that counties and other
17 local jurisdictions provide funding to K-12 school districts. The title also does not
18 provide notice that property taxes paid to counties and other jurisdictions could be
19 affected by SB 1476.

20 28. SB 1476 also violates the requirement that bills “embrace but one subject.”
21 Ariz. Const. art. IV, pt. 2, § 13 (“Every act shall embrace but one subject and matters
22 properly connected therewith”); *id.* § 20 (“All . . . appropriations [other than the
23 general appropriations bill] shall be made by separate bills, each embracing but one
24 subject.”). The Court recognized in *Bennett v. Napolitano* that budget reconciliation bills
25 that cover subjects unrelated to their main subject are likely unconstitutional. 206 Ariz.
26 520, 528 ¶ 39 & n.9 (2003).

27 29. SB 1476 is a hodgepodge of unrelated legislation cobbled together as part
28 of political deal-making to garner passage of the budget by narrow margins in both

1 houses of the Legislature. To be sure, some sections of SB 1476 relate to reconciling
2 substantive law with the Legislature's allocation of funds for K-12 education in the
3 general appropriations bill. For example, Section 4 of the bill sets the base per-student
4 funding amount for fiscal year 2015-2016 at \$3,426.74. Other provisions, however,
5 plainly do not relate to appropriations.

6 30. Importantly, although Section K results in a shift in school funding from
7 the State to local jurisdictions, its real purpose is compliance with the One-Percent Cap.
8 It sets forth a new substantive requirement and process by which a substantial amount of
9 the responsibility for funding of additional state aid for education is shifted from the State
10 to local jurisdictions.

11 31. The addition of Section K is not reasonably related to the general subject
12 matter of budget reconciliation for K-12 education. It is in fact a major property tax
13 reform measure worthy of its own separate bill and consideration. And even those
14 provisions of SB 1476 that do relate in some way to K-12 appropriations are not
15 reasonably related to one another. Such independent legislative provisions are separate
16 subjects for purposes of the single-subject rule.

17 **COUNT III – VIOLATION OF NON-DELEGATION DOCTRINE**

18 32. Plaintiffs incorporate the preceding paragraphs herein.

19 33. Article 3 of the Arizona Constitution provides for the separation of the
20 State's executive, judicial, and legislative powers. Article 4, § 1 vests the State's
21 legislative power in the State Legislature, subject to the citizenry's reserved initiative
22 power. The Arizona Constitution also contains specific provisions in Article 9 that make
23 clear that the legislative power to tax must be exercised by a body directly accountable to
24 the people, or the people themselves.

25 34. Taxation is a legislative power, and the Legislature cannot delegate the
26 power to tax to any other body. While the Legislature can delegate to an administrative
27 body or official the power to fix a rate of taxation according to a standard, the Legislature
28 must prescribe the standard to be used. An act which imposes a tax must be certain, clear

1 and unambiguous, especially as to the subject of taxation and the amount of the tax. The
2 Legislature must fix the mode of determining the amount of tax with such a degree of
3 precision as to leave no uncertainty that cannot be removed by mere computation.

4 35. Section K delegates to PTOC the responsibility to “determine the
5 proportion of the violation” of the One Percent Cap “that is attributable to each taxing
6 jurisdiction within the affected school district.” It provides no objective, verifiable
7 standard for making this allocation, other than to state that a jurisdiction with “a tax rate
8 . . . equal to or less than the tax rate of *peer jurisdictions*” is exempt (emphasis added).
9 “Peer jurisdictions,” a term used nowhere else in the Arizona Revised Statutes, is not
10 defined, leaving this determination wholly within PTOC’s discretion.

11 36. Assuming that one or more “peer jurisdictions” are identified, PTOC must
12 then determine how the tax rate of those “peer(s)” compares to that of the jurisdiction to
13 which PTOC is considering allocating school funding responsibility. Again, the
14 Legislature has provided no objective, defined basis for this comparison.

15 37. Once PTOC determines which jurisdictions, if any, have tax rates in excess
16 of their “peers,” it must then allocate responsibility for the overage among those
17 jurisdictions. And, once again, there is no defined standard for doing so.

18 38. It is also unclear if PTOC is to allocate some portion of the constitutional
19 violation to the school district itself.

20 39. Section K thus requires PTOC (rather than the Legislature) to levy an
21 indeterminate tax on various local jurisdictions, the amount of which – and in some
22 instances, whether the tax will even be levied – depends on discretionary determinations
23 of PTOC. Section K is therefore unconstitutional because it constitutes an improper
24 delegation of legislative authority.

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1 **COUNT IV – VIOLATION OF SEPARATION OF POWERS**
2 **AND STATE EX REL. WOODS V. BLOCK**

3 40. Plaintiffs incorporate the preceding paragraphs herein.

4 41. “[S]eparation of power between the branches of government requires that
5 ‘those who make the law be different from those who execute and apply it.’” *State ex rel.*
6 *Woods v. Block*, 189 Ariz. 269, 275 (1997) (citation omitted). To determine whether
7 there is a usurpation by one department of the powers of another department, the Court
8 examines the essential nature of the powers being exercised, the degree of control by the
9 legislative department in the exercise of the power, the objective of the Legislature, and
10 the practical consequences of the action, if available.

11 42. The essential nature of the power delegated to PTOC pursuant to Section K,
12 if that delegation is valid at all, is necessarily executive.

13 43. Three of PTOC’s five members are appointed jointly by the Speaker of the
14 House and President of the Senate. A.R.S. § 42-17002(B)(2).

15 44. On information and belief, the objective of the Legislature in delegating
16 powers to PTOC under Section K was to establish its superiority over the executive
17 department with respect to those powers, rather than to cooperate with the executive by
18 furnishing some special expertise of one or more of its members.

19 45. The practical effect of Section K is that the Legislature has delegated to an
20 administrative agency the power to impose a tax on various local jurisdictions.

21 46. Therefore, all four factors of the *State ex rel. Woods v. Block* test weigh
22 against Section K, and it is unconstitutional.

23 **COUNT V – VIOLATION OF EQUAL PROTECTION, DUE PROCESS,**
24 **PRIVATE PROPERTY RIGHTS, AND THE UNIFORMITY CLAUSE**

25 47. Plaintiffs incorporate the preceding paragraphs herein.

26 48. Under Section K, some local taxing jurisdictions, including Pima County,
27 will be required to levy a general tax within their jurisdictions, a portion of which is for
28 the general support of a jurisdiction other than the one ostensibly levying the tax.

1 49. It is from the proceeds of Pima County’s property tax that the payment by
2 Pima County to TUSD will, of necessity, be made. That payment will cover the portion
3 of the property tax levied by the TUSD governing board on property within TUSD for
4 which Class 3 owners within TUSD receive a credit.

5 50. That means that property owners who live in Pima County, but outside
6 TUSD, including Mr. Klinefelter, will pay a property tax levied by the TUSD governing
7 board for the general support of TUSD, on property that is not within TUSD’s boundaries
8 and could not legally be taxed directly by TUSD.

9 51. Under these circumstances, the taxed population (Pima County) is
10 coextensive with neither the population that elects the State Legislature, nor the
11 population that elects the TUSD school board, the two bodies that are making
12 discretionary taxing and spending decisions.

13 52. Imposition of a tax on a group of taxpayers who do not form a rational
14 class, and who do not vote for the legislative bodies making the taxing decisions, violates
15 due process and equal protection clauses, and constitutes a confiscation of private
16 property for other than legitimate public purposes.

17 53. Section K also runs afoul of Article 9, Section 1, of the Arizona
18 Constitution, which requires that “all [property] taxes shall be uniform upon the same
19 class of property within the territorial limits of the authority levying the tax.” Section K
20 requires a transfer of property-tax revenues to various school districts from certain local
21 jurisdictions. This means that certain groups of local taxpayers will pay property taxes
22 for the support of the statewide public school system, which other property owners
23 throughout the state are not required to pay. The property being taxed is not defined by
24 its intrinsic legal and physical characteristics, but by its location within an overlapping set
25 of jurisdictions whose property tax rates—each perfectly legal in itself—happen to
26 exceed a particular amount in the aggregate.

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PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following:

A. A declaratory judgment that Section K is unconstitutional for the following reasons:

1. Under Article 9, Section 22 of the Arizona Constitution, Section K required a two-thirds vote in both houses of the Legislature, but it only received the support of simple majorities;
2. SB 1476, which contains Section K, violates the single-subject rules in Article 4, Part 2, Sections 13 and 20 of the Arizona Constitution;
3. Section K improperly delegates legislative authority to PTOC in violation of Articles 3, 4, and 9 of the Arizona Constitution;
4. Section K violates Article 3 of the Arizona Constitution because PTOC is an executive agency controlled by legislative leadership; and
5. Section K violates equal protection, due process, and private property rights protected by the U.S. and Arizona Constitutions and the Uniformity Clause in the Arizona Constitution.

B. Injunctive and special action relief prohibiting PTOC or its members from executing, administering, or otherwise taking any action pursuant to Section K;

C. Attorneys' fees pursuant to A.R.S. § 12-348.01 for Plaintiff Pima County and A.R.S. § 12-348 for Plaintiff Klinefelter;

D. Costs pursuant to A.R.S. § 12-341; and

E. Such other and further relief as the Court deems just and appropriate.

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DATED this 3rd day of August, 2015.

BALLARD SPAHR LLP

By: /s/ Joseph A. Kanefield

Joseph A. Kanefield
Heather T. Horrocks
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Attorneys for Plaintiffs

BARBARA LAWALL
PIMA COUNTY ATTORNEY

By: /s/ Regina L. Nassen

Regina L. Nassen
Lorna M. Rhoades
Deputy County Attorneys
32 N. Stone, Suite 2100
Tucson, Arizona 85701
Attorneys for Pima County