MEMORANDUM

Date: June 8, 2015

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

From: C.H. Huckelberry
County Administrator

Re: **Pima County versus the State of Arizona and the Property Tax Oversight Commission**

Today, as authorized by the Board of Supervisors, a Petition for Special Action was filed in the Supreme Court of the State of Arizona to prevent enforcement of Section 7 of Senate Bill (SB) 1476 because it is unconstitutional. SB 1476 fundamentally changes the fiscal responsibility for certain Additional State Aid for Education, shifting that responsibility from the State to local jurisdictions, primarily Pima County. For 34 years, the State of Arizona has provided this financial assistance to schools to offset reductions in their property tax levies that result from tax credits given to certain residential property owners as required by a 1980 amendment to the Arizona Constitution.

The estimated adverse fiscal impact of this legislation on Pima County is estimated to be anywhere from $8.4 million to as much as $18.6 million. The actual amount will depend on allocation decisions to be made by the Property Tax Oversight Commission. In this year's budget, I am recommending the Board increase the primary property tax rate by $0.1100, which would yield the minimum estimated amount of $8.4 million. I will also recommend to the Board a resolution pledging to eliminate this property tax and levy increase if the County is successful in our petition to the Supreme Court before the tax levy on the third Monday in August.

Our argument to the Supreme Court has been narrowed to two primary issues among several that could have been submitted to the Court. Our arguments were narrowed for purposes of simplicity and achieving, hopefully, a swift decision from the Supreme Court. The two arguments are as follows:

1. SB 1476 violates the Separation of Powers Doctrine in Article 3 of the Arizona Constitution and unconstitutionally delegates taxing authority to the Property Tax Oversight Commission.

2. SB 1476 violates equal protection and property rights by levying a property tax on the taxpayers of one jurisdiction for the general support of another jurisdiction within which many of those taxpayers do not live, resulting in an unconstitutional taking of private property.

The Supreme Court may or may not accept jurisdiction. If they refuse to accept jurisdiction, such does not mean the County has lost; it simply means the Court does not wish to decide the case at this time. If that happens, we are prepared to file an action in Superior Court pursuing all the County's constitutional claims, including arguments that SB 1476: a) is invalid because it is a legislative act that "provides for an increase in state revenues," but was not passed by a two-thirds majority of the Legislature as required by Article 9, Section 22, of the Arizona Constitution; b) violates the single subject rule in Sections 13 and 20 of Article 4 of the Arizona Constitution; c) violates the separation-of-powers doctrine and improperly delegates legislative authority in violation of Article 3 and Section 1 of Article 4 of the Arizona Constitution; and d) is a taking of private property for other-than-public purposes and therefore exceeds the Legislature's taxing authority and violates taxpayers' due process, equal protection and private-property rights.

If the Supreme Court does not accept jurisdiction, it could take as long as a year or more to obtain a decision from the Superior Court. This is the reason the resolution being prepared for the Board also indicates that if the County were to receive judicial relief from this unconstitutional law after the property tax rate has been adopted, the County will reduce both the property tax rate and levy in a subsequent fiscal year.

We are hopeful the Governor and legislative leadership will understand the unfair and unlawful consequences of this hastily adopted legislation and call a Special Session to repeal the law. It is inherently unlawful and an unfair consequence to require a taxpayer in one jurisdiction to pay property taxes so they can be transferred to another jurisdiction within which the taxpayer does not live and does not benefit, and for the governing board of which the taxpayer does not vote. That is the reason Mr. Clarence Downy Klinefelter, a resident of Ajo, Arizona, has joined with Pima County in this special action; as a portion of his Pima County property taxes will be transferred to, and expended by, a taxing district 120 miles from Ajo.

CHH/mjk
Attachment

c: Hank Atha, Deputy County Administrator for Community and Economic Development
John Bernal, Deputy County Administrator for Public Works
Tom Burke, Deputy County Administrator for Administration
Jan Lesher, Deputy County Administrator for Medical and Health Services
Thomas Weaver, Chief Civil Pima County Attorney
Regina Nassen, Deputy County Attorney
Robert Johnson, Budget Manager, Finance and Risk Management
Joseph Kanefield, Ballard Spahr, LLP
Brunn Roysden III, Ballard Spahr, LLP
Michael Racy, Racy Associates, Inc.