MEMORANDUM

Date: December 3, 2015

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

From: C.H. Huckelberry
County Administrator

Re: **Motion for Summary Judgment Concerning One Percent Cap Adjustment**

Attached is the motion for summary judgment that was filed yesterday, Wednesday, December 2, 2015 in Maricopa Superior Court, in the County's action challenging the constitutionality of A.R.S. § 15-972(K). That statute was enacted earlier this year as part of Section 7 of Senate Bill 1476, a budget bill concerning K-12 education. The bill shifted responsibility for what is referred to as the One Percent Cap Adjustment for school districts, which was for the last 34 years funded by the State, to local jurisdictions and their taxpayers. As you know, the Board was forced to increase our primary property tax levy by $8.1 million, or 2.5 percent, this fiscal year to fund what we anticipate will be the County's share of the One Percent Cap adjustment payment for Tucson Unified School District (TUSD) for this fiscal year. Pima County's share of this payment could be as much as $16 million. The actual amount is still unknown because the Legislature delegated to the Property Tax Oversight Commission the task of determining the actual allocation to be paid by each jurisdiction and therefore levied on local tax payers, and the Commission has not ruled yet.

The motion asks the Court to grant summary judgment finding that § 15-972(K) violates the Arizona and U.S. Constitutions for five independent reasons:

1. Section 15-972(K) violates Article IV, § 1 of the Arizona Constitution, which vests the State's legislative authority in the Legislature, by delegating taxation power to Commission without a defined standard.
2. Section 15-972(K) violates Article III of the Arizona Constitution, which establishes the separation–of-powers doctrine, by assigning executive duties to Commission, the membership of which is controlled by legislative leadership.
3. Section 15-972(K) violates federal and state constitutional guarantees of equal protection and due process by forcing Pima County to levy a tax on all Pima County taxpayers to satisfy TUSD's tax levy even though TUSD could not directly tax most of those taxpayers, and even though other taxpayers throughout the State are not required to pay this extra school tax.
4. Senate Bill 1476 violates Article 9, Section 22(B)(1) and (5) of the Arizona Constitution by imposing a new tax or assessment on the County without a two-thirds supermajority vote in both houses of the Legislature.

5. Senate Bill 1476 violates the single subject requirement in Article 4, Part 2, Sections 13 and 20 of the Arizona Constitution, because it contains multiple subjects that are unrelated to its title.

I will continue to keep the Board apprised of developments regarding this case, actions of the Property Tax Oversight Commission and its impacts to Pima County taxpayers.

CHH/dr

Attachments

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PIMA COUNTY, a body politic; CLARENCE DOWNY KLINEFELTER,

Plaintiffs,

vs.

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

Defendants.

NO. CV2015-009739

MOTION FOR SUMMARY JUDGMENT

(Assigned to the Honorable Douglas Gerlach)

(Oral Argument Requested)

Pima County and Clarence Downy Klinefelter ("Plaintiffs") move for summary judgment on all of their claims. Section 15-972(K), Arizona Revised Statutes, was enacted earlier this year as part of Section 7 of Senate Bill 1476 ("Senate Bill 1476" or "SB 1476"), a budget trailer bill ostensibly dealing with K-12 education but containing the problematic property tax reform provision at issue here. Senate Bill 1476 is unconstitutional under the Arizona and U.S. Constitutions for five independent reasons.

First, SB 1476 violates the non-delegation doctrine by delegating unbridled taxation power to the Property Tax Oversight Commission ("PTOC"). Second, SB 1476 violates the separation of powers doctrine by assigning executive duties to the legislatively controlled PTOC. Third, SB 1476 violates federal and state guarantees of equal protection and due process by forcing Pima County to levy a tax on all Pima County taxpayers for the general support of the Tucson Unified School District ("TUSD"). Fourth, SB 1476 violates Article 9, Section 22(B)(1) and (5) of the Arizona Constitution by imposing a new tax or assessment on the County without a two-thirds supermajority vote in both houses of the Legislature. Finally, SB 1476 violates the single subject requirement in Article 4, Part 2, Sections 13 and 20 of the Arizona Constitution, because it contains multiple subjects that are unrelated to its title.

For these reasons this Court should grant Plaintiffs' Motion for Summary Judgment on any or all of the claims below. This Motion is supported by the Memorandum of Points and Authorities and the Separate Statement of Facts.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

A. The Public School Funding System.

School funding is a state obligation under Article 11, Section 1 of the Constitution, which provides that "[t]he Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system . . . ." *Roosevelt Elem. School Dist. v. Bishop*, 179 Ariz. 233, 239, 877 P.2d 806, 812 (1994).

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School districts in Arizona rely heavily on property taxes for their funding. Separate Statement of Facts ("SOF") ¶ 2.

The current funding system consists of a base funding requirement for a school district's non-capital costs, which is determined by multiplying a dollar amount set by statute by a district's weighted student count. A.R.S. § 15-943. The base requirement is then adjusted pursuant to a number of statutory provisions. SOF ¶ 4. Ultimately, a base budget is set, and a required amount of funding is calculated. SOF ¶ 5. If the property tax rate that would yield the required funding amount is above a "qualifying tax rate" ("QTR") set by law, then the district's base property tax rate is capped at the QTR, and the State provides equalization funding to cover the gap between the resulting property tax levy and the required base funding. A.R.S. § 15-971.[1]

It should be noted that portions of a school district's costs for certain programs, such as court-ordered desegregation, are not considered in the equalization calculation. SOF ¶ 7. The tax rate necessary to generate sufficient revenue to fund those programs is added to the otherwise-applicable base property tax rate. *See* A.R.S. §§ 15-910.01(D) and 15-910(G). TUSD's tax rate, for example, is relatively high in large part because of the cost of its desegregation program, which is funded entirely from property taxes.[2] SOF ¶ 9.

B. <u>The One Percent Cap for Residential Property.</u>

In 1980, as the Legislature was overhauling the school funding system,[3] voters passed Proposition 106, which added the One Percent Cap. Ariz. Const. art. 9, § 18(1)

[1] A portion of this state equalization funding is provided through the "state equalization assistance tax," a property tax that all counties are required to levy countywide. A.R.S. §§ 15-994, 15-971(C) & (D), and 41-1276(H). Counties are also required to levy a tax on unincorporated areas, at a rate that is half of the QTR. A.R.S. § 15-991.01. Those funds are paid to the State Treasurer "to be deposited in the state general fund to aid in school financial assistance." A.R.S. § 15-991.01.

[2] The Arizona Tax Research Association estimates that $2.12 of TUSD's 2014 property tax rate is for desegregation expenses. SOF ¶ 10.

[3] A comprehensive school-funding bill was passed in 1981. 1981 Ariz. Sess. Laws, ch. 1, § 2.

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("The 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 by this section.").[4] The Legislature is required to provide a system of property tax laws consistent with the provisions of Article 9, Section 18. *Id.* § 18(8).

Section 15-972 provides two types of tax relief for residential (Class Three) property owners.[5] SOF ¶ 13. First, a certain portion of the funding that would be provided by application of the otherwise-applicable school district tax rate to Class Three properties in the district is shifted to the State (the "Homeowner Rebate Adjustment") and provided by the State to the school districts (the "Homeowner Rebate ASAE[6]"). A.R.S. § 15-972(B)-(D).

If the aggregate primary property tax rate for a parcel of Class Three property still exceeds the One Percent Cap after the Homeowner Rebate Adjustment, the property owners get an additional credit on their tax bill for the excess (the "One Percent Cap Adjustment"), and the district's tax revenues are once again correspondingly reduced. A.R.S. § 15-972(E). Since 1980, when Article 9, Section 18 was added by the voters, the State has paid the school district the amount by which its tax revenues are reduced by this One Percent Cap Adjustment (the "One Percent Cap ASAE"). SOF ¶ 16.

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[4] The One Percent Cap applies to the combined primary property tax levy of municipalities, counties, school districts, and community college districts. Ariz. Const. art. 9 § 18(2)(b). It excludes, and therefore does not limit, taxes that are now a part of the "secondary" property tax levy, as well as voter-approved overrides. *Id.* § 18(2)(c).

[5] The 2014 additional state aid for education guidelines from the Arizona Department of Revenue explain how to calculate the tax relief provided to residential property owners. SOF ¶ 13, n.4.

[6] "ASAE" refers to "additional state aid for education."

C. Senate Bill 1476.

On March 9, 2015, the Legislature enacted and transmitted to the Governor thirteen bills comprising the State's operating budget for fiscal year 2016.[7] SOF ¶ 22. At issue in this case is SB 1476, the K-12 Education Omnibus Reconciliation Bill ("ORB"). SOF ¶ 22. Senate Bill 1476's title provides in relevant part: "An act . . . amending section[] . . . 15-972 . . . ; relating to kindergarten through grade twelve budget reconciliation." SOF ¶ 23. Senate Bill 1476's title thus contains no reference to any property tax reform. Senate Bill 1476 also passed the Arizona Legislature by only a simple majority vote. SOF ¶ 24.

Section 7 of SB 1476 adds a new subsection K to § 15-972. SOF ¶ 22. This new provision limits the state's funding of the One Percent Cap ASAE to $1 million per county beginning in fiscal year 2016. SOF ¶ 25. For any remaining shortfall, it requires PTOC, an administrative commission, to "determine the proportion of the violation" of the One Percent Cap that is attributable to each taxing jurisdiction within the affected school district or districts. A.R.S. § 15-972(K). Based on that determination, PTOC "shall determine an amount that each taxing jurisdiction within the affected school district or districts shall transfer to the affected school district or districts . . . ." A.R.S. § 15-972(K). When allocating proportionate liability for local jurisdictions collectively exceeding the One Percent Cap, PTOC must determine if a local jurisdiction has a tax rate at or below its "peer jurisdictions," a term that SB 1476 does not define or explain. SOF ¶ 27. If a jurisdiction has a tax rate below its peer jurisdictions, then its proportion

[7] The budget bills were set forth in the general appropriations bill (HB 1469), the capital outlay bill (SB 1470), the budget procedures bill (SB 1472), and ten Omnibus Reconciliation Bills ("ORB"), consisting of the Revenue ORB (SB 1471), the Government ORB (SB 1473), the Environment ORB (SB 1474), the Health ORB (SB 1475), the K-12 Education ORB (SB 1476), the Higher Education ORB (SB 1477), the Criminal Justice ORB (SB 1478), the Human Services ORB (SB 1479), the Agency Consolidation ORB (SB 1480), and the Trust Land Management ORB (SCR 1018). SOF ¶ 22, n.6. Because Section 7 of SB 1476 is substantive property tax legislation that was inappropriately included as part of the Education ORB, it violates the single subject rule. *See* Sec. IV, *infra*.

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of the constitutional violation is zero, and it does not have to transfer funds. A.R.S. § 15-972(K).

Senate Bill 1476 includes several other substantive changes to law. For example, Section 4 of the bill sets the base per-student funding amount for fiscal year 2015-2016 at $3,426.74; Section 8 adds an additional annual reporting requirement to the duties of the School Facilities Board and Section 2 modifies the contents of another School Facilities Board report; Section 3 changes joint technical education district ("JTED") funding, but only beginning in FY 2017; and Section 3 contains a provision prohibiting school districts from discouraging students from attending courses offered by a JTED. SOF ¶ 28.

On March 10, 2015, PTOC met and discussed SB 1476. SOF ¶ 29. Not surprisingly, its members expressed confusion about how to implement SB 1476. SOF ¶ 30. PTOC members discussed concerns with the language such as the lack of a definition for "peer jurisdictions" and whether the state should be included in the pro rata share or not. SOF ¶ 31. They recommended clarifying language be provided by the Arizona Legislature, but that never happened. *Id*. Indeed, a strike-everything amendment to SB 1076 was adopted by the House Appropriations Committee on March 26, 2015, in an apparent effort to address SB 1476's constitutional deficiencies by defining "peer jurisdictions." SOF ¶ 32. That bill, however, did not advance out of the House. *Id*. To date, PTOC has not addressed any of the deficiencies of SB 1476 despite meeting several more times. SOF ¶ 33.

Senate Bill 1476 became effective on July 3, 2015. Ariz. Const. art. 4, pt. 1, § 1(3). Based on JLBC estimates, the $1 million cap means that Pima County, the City of South Tucson, the City of Tucson, and Pima Community College District, will be required to provide TUSD with approximately $17.3 million in fiscal year 2016. SOF ¶ 34. San Fernando and Altar Valley school districts, which are in Pima County, are also expected to qualify for a small amount of One Percent Cap ASAE. SOF ¶ 35. In effect, SB 1476 requires the local taxing jurisdictions within a school district whose tax levy is

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reduced as a result of the One Percent Cap, to transfer the jurisdictions' own funds to the school district to make up for the reduction. SOF ¶ 38.

Pima County, unlike other counties, has a large unincorporated population and relies exclusively on property taxes for its funding. SOF ¶ 20. This means that Pima County has a limited pool of funds by which to pay this new tax, and its only mechanism to raise additional funds is through additional property taxes. *Id*.

STANDARD OF REVIEW

Summary judgment is appropriate "if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482 ¶ 14, 38 P.3d 12, 20 (2002), as corrected (Apr. 9, 2002). Summary judgment should be granted if the moving party can demonstrate that "the non-moving party cannot prevail based on the substantive legal principles applicable to the case." *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 118 n.8, 180 P.3d 977, 983 n.8 (App. 2008). The parties agree there are no genuine issues of material fact. For the reasons below, Plaintiffs are entitled to judgment as a matter of law.

ARGUMENT

I. SB 1476 VIOLATES THE SEPARATION OF POWERS DOCTRINE.

Article 3 of the Arizona Constitution provides for the separation of powers. "Nowhere in the United States is this system of structured liberty [of separation of powers] more explicitly and firmly expressed than in Arizona." *Mecham v. Gordon*, 156 Ariz. 297, 300, 751 P.2d 957, 960 (1988). The legislative power is vested in the Arizona Legislature. Ariz. Const. art. 4, pt. 1, § 1(1); *San Carlos Apache Tribe v. Superior Court ex rel. Cnty. of Maricopa*, 193 Ariz. 195, 211, 972 P.2d 179, 195 (1999) ("The Legislature has the power to enact and create law within constitutional bounds."). "[S]eparation of power between the branches of government requires that 'those who

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make the law be different from those who execute and apply it.'" *State ex rel. Woods v. Block*, 189 Ariz. 269, 275, 942 P.2d 428, 434 (1997) (citation omitted).

A. SB 1476 Unconstitutionally Delegates Legislative Taxing Authority to PTOC.

Senate Bill 1476 impermissibly delegates taxing power to PTOC.[8] A tax is a "forced contribution of wealth to meet the public needs of government." *Stewart v. Verde River Irrigation & Power Dist.*, 49 Ariz. 531, 544, 68 P.2d 329, 334 (1937); *see also May v. McNally*, 203 Ariz. 425, 430-31 ¶ 24, 55 P.3d 768, 773-74 (2002). Senate Bill 1476 assigns taxing power to PTOC, because it requires counties and other local jurisdictions whose boundaries overlap with an "affected school district" to pay that district an amount determined by PTOC.

The Arizona Constitution requires that the power to tax be exercised by a legislative body accountable to the people or the people themselves. *See, e.g., Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 573, 959 P.2d 1256, 1264 (1998) ("[W]e are of the opinion that the first sentence of Art. IX, § 1 is a prohibition against the surrender or relinquishment of the right to impose a tax.") (quoting *Switzer v. City of Phoenix*, 86 Ariz. 121, 127-28, 341 P.2d 427, 431 (1959)); *Climate Control, Inc. v. Hill*, 86 Ariz. 180, 191, 342 P.2d 854, 861 (1959) (citing Article 3 and Article 9, Section 1 when analyzing separation of powers issue in tax context), *aff'd as modified*, 87 Ariz. 201, 349 P.2d 771 (1960); *Cutter Aviation, Inc. v. Arizona Dep't of Revenue*, 191 Ariz. 485, 498, 958 P.2d 1, 14 (App. 1997) ("The purpose of the first sentence of Ariz. Const. art. IX, § 1 is to prevent state government from delegating to other bodies the power to impose taxes."); *Ariz. Dep't of Rev. v. Gen. Motors Acceptance Corp.*, 188 Ariz. 441, 446, 937 P.2d 363, 368 (App. 1996) (recognizing rule in *Climate Control*). Unlike the Legislature, PTOC has no such accountability.

[8] *See* Section III.A *infra* for further discussion about how SB 1476 clearly imposes a tax.

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The legislative authority of the State is vested in the Legislature. Ariz. Const. art. 4, pt. 1, § 1(1). The Legislature must follow a specific process to exercise that power. *See Brewer v. Burns*, 222 Ariz. 234, 239-41 ¶¶ 23-35, 213 P.3d 671, 676-78 (2009). It is fundamental that the legislative power thus entrusted cannot be relinquished nor delegated to any other entity or agency. *Hernandez v. Frohmiller*, 68 Ariz. 242, 251-52, 204 P.2d 854, 860 (1949). The Legislature can "delegate to an administrative body or official . . . the power to fix a rate of taxation according to a standard," but must itself prescribe the standard to be used. *S. Pac. Co. v. Cochise Cnty*., 92 Ariz. 395, 404, 377 P.2d 770, 777 (1963); *Van Winkle v. Fred Meyer, Inc.*, 151 Or. 455, 466, 49 P.2d 1140, 1144 (1935) ("It is a fundamental principle of constitutional law that in delegating powers to an administrative body, the Legislature must prescribe some rule of law or fix some standard or guide by which the actions of that body, in administering the law, are to be governed and made to conform.").

As the Arizona Supreme Court held in *Duhame v. State Tax Comm'n*, 65 Ariz. 268, 272, 179 P.2d 252, 254 (1947), "[a]n act which imposes a tax must be certain, clear and unambiguous, especially as to the subject of taxation and the amount of the tax . . . . The legislature must fix the mode of determining the amount of tax 'with such a degree of precision as to leave no uncertainty that cannot be removed by mere computation.'" (citations omitted), *overruled on other grounds by Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, 959 P.2d, 1256 (1998); *Bade v. Drachman*, 4 Ariz. App. 55, 60, 417 P.2d 689, 694 (App. 1966) ("What the legislature cannot do is to delegate to an administrative body or official not only the power to fix a rate of taxation according to a standard but also the power to prescribe the standard.").

The standard does not have to be absolutely precise, but it must be reasonably objective. Otherwise, it will be impossible for those who must comply with the standard to know what is expected of them and impossible for a court to determine whether the standard has been met. *Tillotson v. Frohmiller*, 34 Ariz. 394, 403, 271 P. 867, 870 (1928) ("A legislative act must be complete in itself, so that those charged with its

administration are amenable to the courts for failure to put it into effect, or for its maladministration."). "It may safely be said that a statute which gives unlimited regulatory power to a commission, board or agency with no prescribed restraints nor criterion nor guide to its action offends the Constitution as a delegation of legislative power." *State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114, 252 P.2d 87, 89 (1953). In other words, "a power given must be prescribed in terms sufficiently definite to serve as a guide in exercising that power." *Hernandez*, 68 Ariz. at 252, 204 P.2d at 861.

Senate Bill 1476 delegates to PTOC the responsibility to "determine the proportion of the violation" of the One Percent Cap "that is attributable to each taxing jurisdiction within the affected school district." It provides no objective, verifiable standard for making this allocation, other than to state that a jurisdiction with "a tax rate … equal to or less than the tax rate of *peer jurisdictions*" is exempt (emphasis added). "Peer jurisdictions," a term used nowhere else in the Arizona Revised Statutes, is not defined, leaving this determination wholly within PTOC's discretion. This alone is fatal to the statute's constitutionality. The Arizona Supreme Court struck down part of a provision in the Workmen's Compensation Act because the term "premium tax" was not defined. The court held that because it was "impossible to relate the words . . . with certainty to any portion of the . . . Act, we are compelled to hold that the language thereof is an unconstitutional attempt to delegate to the Commission the right to impose a tax, and as such is void." *Climate Control*, 86 Ariz. at 192, 342 P.2d at 862. This is exactly the case here. The legislature is requiring PTOC to impose a tax on jurisdictions based on unclear, uncertain and undefined language. This stands in stark contrast to the precision and certainty with which a tax statute should be drafted. Ariz. Const. art. 9, § 3 ("[E]very law imposing a tax shall state distinctly the object of the tax, to which object only it shall be applied.").

Further, it is not clear whether "peer jurisdictions" should be based on a jurisdiction's size, population, scope of services provided, or any other criteria for that

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matter.[9] For example, Pima County is the only county that provides sewer service per A.R.S. § 11-264 and therefore has no "peer" in this regard. Also unlike other counties, Pima County relies exclusively on property taxes, and has a large unincorporated population.

Another possible option would be for PTOC to create one category with all counties, or create two categories such as large and small counties. In doing so, it will change which jurisdictions' tax rates are "at or below" their peer jurisdictions.

Assuming that one or more "peer jurisdictions" are identified, PTOC must then determine how the tax rate of those "peer(s)" compares to that of the jurisdiction to which PTOC is considering allocating school funding responsibility. Again, the Legislature has provided no objective, defined basis for this comparison. If there is more than one peer jurisdiction, it is not clear if PTOC is to *average* their tax rates for comparison to the subject jurisdiction and if so, whether the average will be calculated based on the arithmetic mean, median or some other method of comparison.[10] The determined calculation could have enormous tax consequences for the targeted local jurisdiction.

The State may argue that SB 1476 merely provides a straightforward mathematical computation but this argument fails because if the Legislature had intended such a computation, it would have done so in clear, certain and specific terms. *See McElhaney*

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[9] A strike-everything amendment to SB 1076 was adopted by the House Appropriations Committee on March 26, 2015, in an apparent effort to address SB 1476's constitutional deficiencies by defining "peer jurisdictions." That bill, however, did not advance out of the House. *See* SOF ¶ 32.

[10] Senate Bill 1476's vagueness becomes apparent when it is compared to other property tax statutes, which carefully define how an assessment is determined. Section 42-14255, for example, clearly outlines the process for determining the property tax rate. That statute provides that the tax is levied "against the values so determined and assessed at a rate that equals the sum of the average rates for primary and secondary property taxes in the taxing jurisdictions in this state for the current year." A.R.S. § 42-14255(A)(3). Thus, if the Legislature intended to use an averaging methodology in SB 1476 it would have said so. *See Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 327 ¶ 15, 266 P.3d 349, 353 (2011) ("This consistent pattern persuades us that if the legislature had intended to include the state within its definition of 'enterprise' in § 46–455(Q), it would have expressly done so.").

Cattle Co. v. Smith, 132 Ariz. 286, 291, 645 P.2d 801, 806 (1982) (doubting that framers of language "would have attempted to carry [their purpose] into effect in such an uncertain and doubtful manner, when [they] could have done so easily and naturally" (citation omitted)); compare SB 1476 with A.R.S. § 42-17051, which sets forth a seven-step mathematical formula for determining the aggregate primary property tax levy limit for counties, cities, towns and community college districts.

Once PTOC determines which jurisdictions, if any, have tax rates in excess of their "peers," it must then allocate responsibility for the overage *among* those jurisdictions. And, once again, there is no defined standard for doing so. "Pro rata share" implies an equitable distribution based on a comparison of numeric values, but there is no indication which numeric values are to be compared. And use of the term "proportion of the *violation*" implies that there is to be some determination of "fault," rather than a simple arithmetic calculation, but there again is no guidance with respect to how fault is to be assigned.

It is also unclear if PTOC is to allocate some portion of the constitutional violation to the school district itself. There are a few school districts in the State that have such low assessed property values that the district's gross primary tax rate alone (after equalization adjustment, but before the Homeowners Rebate Adjustment or the One Percent Cap Adjustment), is close to or even exceeds the One Percent Cap.[11] It is unclear how an allocation will be done under those circumstances. If the school district is the only jurisdiction whose tax rate exceeds that of its "peer jurisdictions," it is unclear whether the school district will be entitled to *any* funding under § 15-972(E). Yet depriving such a district of this funding would be contrary to the State's obligation to equalize funding in order to provide for a uniform statewide public school system. *See Roosevelt Elem. School Dist.*, 179 Ariz. at 240, 877 P.2d at 813.

[11] *E.g.*, Bowie Unified School District ($11.1018) and Double Adobe SD ($9.8521), both in Cochise County; Hayden/Winkelman SD #41 ($12.3382) in Gila County; Grand Canyon Unified School District ($12.0994) in Coconino County. SOF ¶ 37.

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PTOC cannot make the required allocation without making decisions that are inherently political, subjective and legislative in nature.[12] The allocation process may not even be subject to the procedural requirements applicable to executive agencies that have rule-making authority (see Chapter 6 of Title 41, Arizona Revised Statutes). And if an impacted jurisdiction, such as Pima County, or a taxpayer within such a jurisdiction, challenges PTOC's allocation, the court has no basis on which to determine whether any of those decisions should be reversed. *See* A.R.S. § 12-910(E).

In sum, SB 1476 requires PTOC (rather than the Legislature) to levy an indeterminate tax on various local jurisdictions and therefore constitutes an unconstitutional delegation of legislative authority.

B. The Legislature Unconstitutionally Executes SB 1476 Through the Appointment and Control of PTOC's Majority.

If the power assigned to PTOC by Senate Bill 1476 is executive rather than legislative, it violates the separation-of-powers doctrine because the membership of PTOC is controlled by legislative leadership. While "a law is not invalid merely because the Legislature appoints *some* of the members of an executive committee[,] . . . the Legislature, through its appointments, [may not] maintain[] control over an executive agency in violation of separation of powers." *Block*, 189 Ariz. at 275-76, 942 P.2d at 434-35 (emphasis added). To determine whether there is a "usurpation by one department of the powers of another department," the court examines "the 'essential nature' of the powers being exercised, 'the degree of control by the legislative department in the exercise of the power,' the objective of the Legislature, and the practical consequences of the action, if available." *Id.* at 276, 942 P.2d at 435 (citation omitted). Applying these factors, the Legislature's control over PTOC clearly crosses the line separating the legislative and executive departments.

[12] *See Arizona State Univ. ex rel. Arizona Bd. of Regents v. Arizona State Ret. Sys.*, 237 Ariz. 246, ¶¶ 17-21, 349 P.3d 220, 225 (App. 2015) (noting that where a statute required the System to make complex calculations to implement it, the statute required a Rule under the Administrative Procedure Act to interpret it).

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First, the essential nature of the power delegated to PTOC pursuant to SB 1476, if that delegation is valid at all, is necessarily executive.[13] Second, the legislative branch[14] maintains control over PTOC given that the Speaker of the House and President of the Senate jointly appoint three of PTOC's five members. A.R.S. § 42-17002(B)(2). The court's decision in *Block* is instructive here. The court held that the legislative branch "clearly . . . maintain[s] control" of an agency when that branch, through the Speaker and President, "appoints the controlling majority of the voting members, who serve at the pleasure of the appointing persons." *Block*, 189 Ariz. at 276, 942 P.2d at 435. In this respect, PTOC is indistinguishable from the Constitutional Defense Council, the agency at issue in *Block*. The Legislature controls the PTOC majority, who serves at the pleasure of the legislative leaders and may be removed at any time regardless of their terms. *See Ahearn v. Bailey*, 104 Ariz. 250, 255, 451 P.2d 30, 35 (1969) (appointed officers "may be removed at the pleasure of the power by which they shall have been appointed.").[15]

To evaluate the third factor, the court determines whether the intent of the Legislature is "to cooperate with the executive by furnishing some special expertise of one or more of its members" or is to clearly "establish[] its superiority over the executive department." *Block*, at 277, 942 P.2d at 436 (citation omitted). The court's decision in *San Carlos Apache Tribe v. Superior Court ex rel. Cty. of Maricopa*, 193 Ariz. 195, 972 P.2d 179 (1999), is instructive here. The court held that A.R.S. § 45-258 violated

[13] If PTOC's authority goes beyond merely carrying out policies already declared by the Legislature, and PTOC is instead legislating in its own right, then SB 1476 is an unconstitutional delegation of taxing authority. *See* Part I.A, *supra*.

[14] Interference by the legislative branch in an executive or judicial function is problematic even when the control is not exercised by the Legislature as a whole. Improper control of PTOC by legislative leadership therefore does not make the delegation to PTOC proper even if this Court concludes that the true nature of the delegation is the legislative power to make, rather than merely administer or enforce, the law.

[15] Further, A.R.S. § 38-295 which states that "every officer whose term is not fixed by law holds office at the pleasure of the appointing power," was amended earlier this year to remove the words "whose term is not fixed by law," thus clearly establishing that the PTOC members serve at the pleasure of the legislative leaders despite their fixed terms. *See* 2015 Ariz. Sess. Laws, ch. 218, § 3.

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separation of powers in part because the legislature attempted to establish its superiority over the judicial branch by depriving the court of its ability to determine facts in certain water adjudication matters. *Id.* at 212, 972 P.2d at 196. The Legislature required the court to decree certain water uses *de minimis* as defined in the statute, *id.* at 212, 972 P.2d at 196, which the court held deprived it of "the power to hear the facts and make the ultimate conclusion in the context of each watershed." *Id.*

Here, the legislative appointments bring no "special expertise" that could not be furnished by the executive.[16] *See* A.R.S. § 42-17002(B)(2) (appointees simply must be "knowledgeable in the area of property tax assessment and levy"). And there is no legislative need to maintain control of PTOC other than to establish superiority over the executive. Given SB 1476's delegation of unbridled taxation power to PTOC, it is clear that the Legislature's objective in passing SB 1476 was to control the process of determining each local jurisdiction's tax liability in the context of compliance with the One-Percent Cap, thereby violating separation of powers.

Under the fourth factor, courts consider "the practical result of such a blending of powers" and whether "public policy favors such a blending of powers." *JW Hancock Enters. v. Ariz. State Registrar of Contractors*, 142 Ariz. 400, 406, 690 P.2d 119, 125 (App. 1984). As discussed in Part I.A, *supra*, the practical effect of SB 1476 is that the Legislature has delegated to PTOC, an administrative agency, the power to impose a tax on local jurisdictions. Public policy particularly disfavors delegation of the taxing power (other than to governing bodies of political subdivisions that are themselves elected), because political accountability for the exercise of that power is paramount. *See S. Pac. Co. v. Cochise Cnty.*, 92 Ariz. 395, 404, 377 P.2d 770, 777 (1963) ("What the legislature cannot do is to delegate to an administrative body or official not only the power to fix a rate of taxation according to a standard but also the power to prescribe the standard.").

[16] The Arizona Department of Revenue's Director serves as PTOC's chair. A.R.S. § 42-17002. The Director, who is an executive official, has special expertise to assist PTOC. Given his expertise, it makes little sense for the Legislature to appoint PTOC's majority, unless the purpose is to control PTOC and oversee the Director.

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Further, another "practical result" of a blending of powers is confusion. PTOC's limited experience with SB 1476 has been one of confusion about its interpretation and meaning. SOF ¶ 30.

At bottom, under SB 1476, a legislatively controlled commission has been delegated unbridled discretion without any clear guidance to impose taxes on local taxpayers. This blurs accountability and clearly demonstrates that PTOC's exercise of its power under SB 1476, even if executive in nature, violates separation of powers.

II. SENATE BILL 1476 VIOLATES EQUAL PROTECTION, DUE PROCESS, AND PRIVATE PROPERTY RIGHTS BY LEVYING A TAX ON PROPERTY OWNERS IN ONE JURISDICTION FOR THE SUPPORT OF ANOTHER.

Taxing and spending decisions are, appropriately, reviewed by courts using a very deferential rational-basis standard of review. Because such decisions are inherently political, they are entrusted to democratically elected legislative bodies, which are answerable to their constituency and are not subject to second-guessing by courts. But the reason for that deference also defines its limits. Political judgments become constitutionally suspect when the political process breaks down.[17] With respect to taxation, this breakdown occurs when the population paying the tax is not at least generally coextensive with the population that elects the legislative body imposing the tax and spending the resulting revenues. Thus, courts invalidate extra-jurisdictional taxes as well as taxes that, because they utilize irrational classification schemes, essentially target random groups of taxpayers.

[17] For example, the Ninth Circuit recently struck down the City of Tucson's hybrid system for electing city council members, finding that it violated the Equal Protection clause because it created a "mismatch between the voting constituency and the represented constituency" by changing the geographical unit between primary and general elections. *Pub. Integrity All., Inc. v. City of Tucson*, No. 15-16142, __ F.3d __, 2015 WL 6875310, at *3 (9th Cir. Nov. 10, 2015). The Court held that it is constitutionally impermissible to "decouple the representative to be elected from his constituency." *Id.*

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That is the underlying problem with SB 1476. The functional result of SB 1476 is that a property tax levied by a school district governing board, pursuant to a scheme created by the State Legislature, is ultimately paid by a population that bears no resemblance to the population that elects either that governing board or the State Legislature. The population of targeted taxpayers is random. It is not composed of all taxpayers, or even of some rationally-defined *class* of taxpayers, throughout either the subsidized districts or the State as a whole. As a result, § 15-972(K) violates basic constitutional guarantees of equal protection,[18] due process, protection of private property rights, and—for property taxes—state constitutional uniformity requirements. See, *e.g.*, *Big D Construction Corp. v. Court of Appeals*, 163 Ariz. 560, 566, 789 P.2d 1061, 1067 (1990) (statute that gave a five percent advantage in bids for municipal contracts to corporations who paid property taxes is irrational and violates equal protection); *Tanque Verde Enterprises v. City of Tucson*, 142 Ariz. 536, 541, 691 P.2d 302, 307 (1984) (a tax statute may be so arbitrary, on its face, that it is an uncompensated confiscation of property rather than a valid exercise of the taxing power); *Ariz. Downs v. Ariz. Horsemen's Found.*, 130 Ariz. 550, 555-57, 637 P.2d 1053, 1058-60 (1981) (equal protection and due process); *Norfolk & W. Ry. Co. v. Mo. State Tax Comm'n*, 390 U.S. 317, 325 (1968) ("The taxation of property not located in the taxing State is constitutionally invalid, both because it imposes an illegitimate restraint on interstate commerce and because it denies to the taxpayer the process that is his due.").[19]

[18] The Arizona Constitution's equal protection clause provides that "[n]o law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Ariz. Const. art. 2, § 13; *see also* U.S. Const. Amend. XIV, § 1; *Schuff Steel Co. v. Industrial Comm'n*, 181 Ariz. 435, 443, 891 P.2d 902, 910 (App. 1994) ("[a]lthough the federal and state constitutional guarantees of equal protection use different language, their meaning is equivalent").

[19] *See also Wight v. Davidson*, 181 U.S. 371, 377 (1901) ("The constitutional right against unjust taxation is given for the protection of private property."); *City of Glendale v. Betty*, 45 Ariz. 327, 335, 43 P.2d 206, 209 (1935) (excise tax classifications cannot be arbitrary, discriminatory or unreasonable); *Lindsay v. Industrial Comm'n*, 115 Ariz. 254, 256, 564 P.2d 943, 945 (App. 1977).

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A. Senate Bill 1476 Violates Federal and State Equal Protection Guarantees and Private Property Rights.

Although the amount that Pima County will be required to pay TUSD cannot be known until PTOC makes its allocation decisions, the County anticipates that it will be required to provide at least half, and perhaps all, of the One Percent Cap ASAE to which TUSD is entitled.[20] Pima County levies only one general tax – a property tax.[21] This is the only source of general, unrestricted, revenue over which the County Board of Supervisors has control. It is therefore from the proceeds of this tax that the payment to TUSD will, of necessity, be made. That payment is made to "backfill" TUSD's property tax levy; it compensates TUSD for the portion of its levy that it is unable to collect from Class Three owners within TUSD. That means that a portion of Pima County's property tax is not really being levied by the legislative body elected by Pima County taxpayers—the Pima County Board of Supervisors—but by the TUSD school board. The Pima County Board of Supervisors has no discretion with respect to the amount or use of the tax revenues it must collect and provide to TUSD. It is the TUSD board that, in compliance with the State Legislature's school-funding scheme, sets the amount of the levy and will spend the resulting revenues. But the tax is being paid not by TUSD taxpayers but by non-Class Three property owners throughout the County and Class Three owners inside the County but *outside* TUSD (because the Class Three owners inside TUSD are receiving a credit). Most of these taxpayers could not constitutionally be

[20] The tax levies of 13 of Arizona's 15 counties, and all the other local jurisdictions within those counties, are included as Exhibit M to the SOF. A look through these levies readily reveals that Pima County's rate is higher than the other counties. However PTOC ultimately defines "peer" jurisdictions, it seems inevitable that it will ultimately allocate a significant share of liability for TUSD's One Percent Cap ASAE to Pima County. SOF ¶ 36.

[21] Counties are authorized to levy a general excise tax under A.R.S. § 42-6103, but such a levy requires a unanimous vote of the board of supervisors, and Pima County has not done so. The Pima County Regional Transportation Authority, a separate political subdivision, does levy a countywide excise tax under A.R.S. § 42-6106, which is restricted to use for transportation projects.

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directly taxed by TUSD, yet they will provide the funds to satisfy TUSD's property-tax levy. This scheme is inherently irrational.

Nor do the taxpayers who will provide the funding for Overage Payments throughout the State form a rational statewide class; they are pockets of taxpayers in only two of the state's 15 counties, who are not distinguished or defined by any characteristics inherent to them or to the taxed property or transactions. And the amount of tax they must pay to provide the Overage Payments will vary from county to county and jurisdiction to jurisdiction.

The taxpayers who will provide the funding for the Overage Payments have the same interest in, and receive the same benefits from a public school system, as all the other residents and taxpayers of the State—yet they are required to provide additional funding for it.

Compliance with the One-Percent Cap cannot be accomplished by arbitrarily taxing one class of taxpayers for the benefit of another. Doing so violates the due process and equal protection clauses, and constitutes a confiscation of private property for other than legitimate public purposes. As the Arizona Supreme Court has noted: "No more than an individual, should one set of tax-payers be permitted wrongfully to enrich themselves at the expense of another group." *Glendale Union High Sch. Dist. v. Peoria Sch. Dist. No. 11*, 55 Ariz. 151, 156-57, 99 P.2d 482, 484 (1940).

Other courts have reached the same conclusion. The Nebraska Supreme Court has, for example, observed that:

> a tax levied for a public purpose must also be levied for the use of the district which is taxed. Should the Legislature order that money be raised by one district and paid to another district, to be used for the sole benefit of that other district, that would be an exaction of money for the benefit of others than those who are taxed and clearly beyond what could be justified as taxation.

Peterson v. Hancock, 54 N.W.2d 85, 93 (Neb. 1952). The court invalidated a property tax levied on property within any and all school districts, but the proceeds of which were distributed only to those districts with more than five students. *See also Tennant v.*

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Sinclair Oil & Gas Co., 355 P.2d 887, 889 (Wyo. 1960) (striking down a statute requiring a property tax to be levied in certain school districts—those without high schools—the proceeds of which were distributed to other districts); *Thomas v. Gay*, 169 U.S. 264, 283 (1898) ("When, as may sometimes happen, the legislature transcends its functions, and enacts, in the guise of a tax law, a law whereby the property of the citizen is confiscated, or taken for private purposes, the judiciary has the right and duty to interpose."); *Buse v. Smith*, 247 N.W.2d 141, 153, 155 (Wis. 1976) (noting that "A state purpose must be accomplished by state taxation, a county purpose by county taxation" and that "the state cannot compel one school district to levy and collect a tax for the direct benefit of other school districts, or for the sole benefit of the state").

B. Senate Bill 1476 violates Arizona's Property Tax Uniformity Clause.

Senate Bill 1476 also runs afoul of Article 9, Section 1, of the Arizona Constitution, which requires that all property taxes "be uniform upon the same class of property." *In re Am. West Airlines, Inc. v. Dep't of Revenue*, 179 Ariz. 528, 530, 880 P.2d 1074, 1076 (1994) (the uniformity clause of art. 9, § 1 imposes greater limits on state taxing authorities than the federal equal protection clause). The Uniformity Clause "is designed to ensure that each taxpayer's property bear[s] the just proportion of the property tax burden." *Aileen H. Char Life Interest v. Maricopa Cnty.*, 208 Ariz. 286, 291 ¶ 7, 93 P.3d 486, 491 (2004) (citation omitted). This requirement is violated when two classes of property that are not rationally distinguishable from one another based on any legitimate differences in their physical or legal characteristics, the industries in which they are deployed, or their use, purpose, or productivity, are taxed in a disparate manner. *Magellan S. Mt. Ltd. P'ship v. Maricopa Cnty.*, 192 Ariz. 499, 504 ¶ 23, 968 P.2d 103, 108 (App. 1998).

The Legislature levies a statewide property tax at a uniform rate that is used to help fund schools throughout the state. *See* A.R.S. § 15-994. But SB 1476 requires a transfer of revenues from one jurisdiction to another, in effect levying an *additional*

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property tax to support education. This, however, is not a statewide tax.[22] It will be levied only in certain locations, on property defined not by its intrinsic legal and physical characteristics, but by its location within an overlapping set of jurisdictions whose property tax rates — each perfectly legal in itself — happen to exceed a particular amount in the aggregate.

III. SENATE BILL 1476 VIOLATES THE ARIZONA CONSTITUTIONAL REQUIREMENT THAT A NEW TAX RECEIVE A TWO-THIRDS SUPERMARJORITY VOTE IN THE ARIZONA LEGISLATURE.

The voters enacted Article 9, Section 22 of the Arizona Constitution in 1992 to make it more difficult to raise taxes.[23] It imposes a two-thirds supermajority requirement in both houses of the Legislature for any act that provides for a net increase in state revenues, as described in Article 9, Section 22(B), unless the act qualifies for one of the exceptions in Section 22(C). Article 9, Section 22 provides, in relevant part:

> A. An act that provides for a net increase in state revenues, as described in subsection B is effective on the affirmative vote of two-thirds of the members of each house of the legislature.
>
> B. The requirements of this section apply to any act that provides for a net increase in state revenues in the form of:
>
> 1. The imposition of any new tax.
>
> . . .
>
> 5. The imposition of any new state fee or assessment or the authorization of any new administratively set fee.
>
> . . .
>
> 7. A change in the allocation among the state, counties or cities of Arizona transaction privilege, severance, jet fuel and use, rental occupancy, or other taxes.
>
> 8. Any combination of the elements described in paragraphs 1 through 7.

[22] As noted, Pima County does not have another source of general tax revenues. Some other impacted jurisdictions levy excise taxes, to which the uniformity clause does not apply, so we are confining our argument here to Pima County.

[23] Secretary of State, *State of Arizona 1992 General Election Publicity Pamphlet*, 46, (1992), http://www.azsos.gov/sites/azsos.gov/files/pubpam92.pdf.

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Senate Bill 1476 satisfies each of the foregoing criteria, thus requiring approval by two-thirds of each house of the Legislature, which it did not receive. SOF ¶ 24.

A. Senate Bill 1476 Imposes a New Tax or Assessment.

Senate Bill 1476 satisfies either subsection (B)(1) or (5) because it imposes a new tax or assessment. Generally, a tax is "the enforced contribution of persons and property, levied by authority of the state for the support of the government and for all public needs." *Hunt v. Callaghan*, 32 Ariz. 235, 239, 257 P. 648, 649 (1927). "Taxes are generally held to be burdens or impositions laid for purposes of general revenue." *Weller v. City of Phoenix*, 39 Ariz. 148, 151, 4 P.2d 665, 667 (1931). "Assessment" is generally used to encompass a broad range of imposts, duties and obligations, including taxes and fees. *See, e.g. May v. McNally*, 203 Ariz. 425, 430-31 ¶¶ 23-24, 55 P.3d 768, 773-74 (2002) (using "assessment" to refer to a tax, fee or surcharge).

Senate Bill 1476 requires counties and other local jurisdictions whose boundaries overlap with an "affected school district" to pay to that school district an amount to be determined by PTOC. For TUSD, that shortfall is expected to be around $17.3 million just for fiscal year 2016 alone. SOF ¶ 34. The State retains more tax revenue to divert to matters other than K-12 education equalization funding, and local jurisdictions bear the brunt by having to raise taxes or cut services. Thus, SB 1476 clearly imposes a tax.

As a practical matter, Pima County has limited sources of unrestricted revenue (*e.g.*, revenue that is not legally restricted to a specific purpose).[24] Therefore, if Pima County is required to pay affected school districts as set forth in SB 1476, the payments will be drawn from its general funds. This obligation substantially burdens Pima County's budget and will ultimately be borne by the Pima County taxpayers. This is an assessment or tax under the common meaning of those terms. *See, e.g., McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290, 645 P.2d 801, 805 (1982) ("When the words of a

[24] Pima County levies a property tax for its general support, SOF ¶ 20, but use of other revenues is restricted. SOF ¶ 21. Further, Pima County does not levy a general excise tax. SOF ¶ 20.

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constitutional provision are not defined within it, the meaning to be ascribed to the words is that which is generally understood and used by the people."). Here, SB 1476 clearly "increases the overall burden on the tax and fee paying public." *Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358, 364 ¶ 24, 238 P.3d 626, 632 (App. 2010).

B. Senate Bill 1476 Changes the Allocation of Taxes Among the State and Counties.

Separate from whether SB 1476 imposes a new assessment or tax, the provision is unconstitutional as a change in the allocation of taxes among the State, counties, and cities. Article 9, Section 22 prevents a simple majority of the Legislature from circumventing the supermajority requirement through the expedient of changing the allocation of tax revenues that would otherwise flow to counties and cities. Ariz. Const. art. 9, § 22(B)(7).

Here, SB 1476 plainly changes the allocation of revenue from property taxes between the State and Pima County. Previously, the County received the revenue from the primary property tax it levied, even if that tax, when combined with the tax rate of other local jurisdictions, exceeded the One Percent Cap. Now, the County must pay a portion (determined by PTOC) of those property-tax revenues to TUSD. The State, which was previously paying the One Percent Cap ASAE, now caps its contribution to school districts within Pima County at $1 million. This will result in a net increase in state revenues. Thus, SB 1476 squarely falls within Section 22(B)(7).

The fact that SB 1476 triggers Article 9, Section 22 is particularly clear in this context because, under Article 11 of the Arizona Constitution, financing of public education in Arizona is the *State's* responsibility. *Roosevelt Elementary Sch. Dist.*, 179 Ariz. at 240, 877 P.2d at 813. The Arizona Supreme Court held that the Legislature must enact laws that establish and maintain the public school system, but noted that the discretion is left to the Legislature as to how it does so. *Id*. While the Legislature may delegate some of its *authority* to other political subdivisions of the state to help finance public education, it cannot delegate its *responsibility* under the Constitution. *Id*.

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If the State had reallocated state-shared sales-tax revenues, keeping a larger share for itself to fund education, and correspondingly reduced the share distributed to counties and municipalities, there would be no question about the application of Section 22(B)(7).[25] Senate Bill 1476 has exactly the same effect, and should be subject to the same requirements. *State v. Yuma Irrigation Dist.*, 55 Ariz. 178, 184, 99 P.2d 704, 706 (1940) ("[the legislature] cannot do indirectly what it cannot do directly") *superseded by constitutional amendment*, Ariz. Const. art. 13, § 7, *as stated in Hohokam Irr. & Drainage Dist. v. Arizona Pub. Serv. Co.*, 204 Ariz. 394, 397 ¶ 8, 64 P.3d 836, 839 (2003).[26]

Arpaio v. Maricopa Cnty. Bd. of Supervisors is the only published opinion interpreting Article 9, Section 22, but it does not apply here. 225 Ariz. 358, 238 P.3d 626 (App. 2010). In *Arpaio*, the court held that the Legislature was not required to comply with Article 9, Section 22 when it ordered a one-time transfer of funds from Maricopa County to the State general fund. *Id.* at 364 ¶¶ 23-25, 238 P.3d at 632. Subsection (B)(7) was not at issue in *Arpaio*. *See id.* at 364 ¶¶ 23-25 & n.7, 238 P.3d at 632 & n.7 (only analyzing subsections (B)(1), (2), (5)). And, in contrast to the one-time fund shift at issue in *Arpaio*, SB 1476 directly reduces property tax revenue that would otherwise go to local jurisdictions and requires local jurisdictions to provide substantial funding to school districts *on an ongoing basis*. It therefore puts the type of upward pressure on taxes that

[25] *See* A.R.S. §§ 42-5029 (distribution of excise tax revenues); 42-5030.01 (use of revenues to pay outstanding state school facilities revenue bonds); 42-5008 (levying privilege tax "for the purpose of raising public money," and providing that any excess funds over what is needed "for state purposes" go to "the state school fund for educational purposes").

[26] Plaintiffs are not arguing, for purposes of this case, that § 22 applies every time the Legislature shifts an obligation to local taxing jurisdictions. The Court need not decide, at this time, whether § 22 is that broad. But SB 1476, however, goes far beyond making a local jurisdiction responsible for a program or service that was previously provided by the State. When the Legislature does that, the local jurisdiction has some control over the expenditures it will make in order to provide the previously State-funded program or service. In contrast, SB 1476 is purely a reallocation of tax revenues; the State is simply taking funds from one jurisdiction and using those funds to supplant tax revenues that the State would otherwise provide to another jurisdiction.

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the court felt was important in understanding the scope of Section 22. *Id.* at ¶ 24 (characterizing section 22 as aimed at actions that "increase[] the burden on the tax and fee paying public."). *Arpaio* is therefore inapplicable to the instant case.

Finally, the exception in Subsection (C)(3) for "taxes, fees or assessments that are imposed by counties, cities, towns and other political subdivisions of this state" is inapplicable. "Imposed by" requires a discretionary act by the political subdivision itself. Here, the Pima County Board of Supervisors has no discretion with respect to the collection, amount, or use of the monies to be provided to TUSD. The tax to raise those monies is therefore being imposed by the State.

IV. SENATE BILL 1476 VIOLATES THE SINGLE SUBJECT RULE REQUIREMENT OF THE ARIZONA CONSTITUTION.

A. Senate Bill 1476's Title Provides No Notice of the Property Tax Reform Contained Within.

Senate Bill 1476's title violates the requirement that "[e]very act shall embrace but one subject and matters properly connected therewith, *which subject shall be expressed in the title*." Ariz. Const. art. IV, pt. 2, § 13 (emphasis added). "[T]he title of an act 'should not be so meager as to mislead or tend to avert inquiry as to the context thereof . . . .'" *Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 243 ¶ 4, 99 P.3d 570, 572 (2004) (citation omitted) *abrogated on other grounds by Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 150-51 ¶¶ 17-18, 291 P.3d 342, 347-48 (2013). Moreover, it must be "'of such character as fairly to apprise legislators, and the public in general, of the subject matter of the legislation, and of the interests that are or may be affected thereby, and to put anyone having an interest in the subject matter on inquiry.'" *Am. Estate Life Ins. v. State*, 116 Ariz. 240, 241-42, 568 P.2d 1138, 1139-40 (App. 1977) (quoting *In re Lewkowitz*, 70 Ariz. 325, 331-32, 220 P.2d 229, 233 (1950)). Senate Bill 1476's title provides no notice of the major property tax reform buried within its lengthy text.

In *American Estate Life Insurance*, the court invalidated a portion of an act where there was "nothing in the title which would put the legislature, the Insurance Companies

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or members of the interested public on notice that a new tax on 'orphan premiums' was going to be imposed." *Id.* at 242, 568 P.2d at 1140. Here, SB 1476's title provides in relevant part: "An act . . . amending section[] . . . 15-972 . . . ; relating to kindergarten through grade twelve budget reconciliation," and contains no reference to any property tax reform. "Reconciliation" is defined as "[r]estoration of harmony between persons or things that had been in conflict" or "[a]n adjustment of accounts so they agree, esp[ecially] by allowing for outstanding terms." *Black's Law Dictionary* (10th ed. 2014). This title does not put the Legislature or the interested members of the public on notice of SB 1476's new requirement that *counties* and other local jurisdictions provide funding to K-12 school districts. Nor does the title provide notice that property taxes paid to counties and other jurisdictions could be affected by SB 1476 and are therefore invalid. Any other conclusion would render the title requirement meaningless. Any fiscal change whatsoever would be permitted, so long as the money saved or revenue generated is directed to K-12 education.[27] For example, the Legislature could include a provision that requires county sheriffs to feed their prisoners green bologna and transmit all savings to the local school districts.[28]

B. Senate Bill 1476's Provisions Do Not All Relate to One Subject.

Senate Bill 1476 violates the requirement that bills "embrace but one subject." Ariz. Const. art. IV, pt. 2, § 13 ("Every act shall embrace but one subject and matters properly connected therewith . . . ."); *id.* § 20 ("All . . . appropriations [other than the general appropriations bill] shall be made by separate bills, each embracing but one subject."). The purpose of the single subject rule is to prevent surprise and the evils of

[27] The largest portion of the State's general fund expenditures is made for public education. SOF ¶ 2. Thus, any change in law that increases general fund revenues could arguably impact public education.

[28] For this same reason, the mere citation to "amending section[] . . . 15-972" in SB 1476's title is insufficient. *Hoyle v. Superior Court*, 161 Ariz. 224, 230, 778 P.2d 259, 265 (App. 1989) (title identifying the statute being amended by chapter and section number alone is sufficient only if the bill contains provisions that are germane to the subject of the legislation being amended). Simply because matters impact state finances is not enough to make them germane to any other budgetary measure.

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surreptitious or hodgepodge legislation, including the practice known as "logrolling." *Taylor v. Frohmiller*, 52 Ariz. 211, 215-16, 79 P.2d 961, 963 (1938).[29]

The Arizona Supreme Court recognized in *Bennett v. Napolitano* that budget reconciliation bills like SB 1476 that cover subjects unrelated to their main subject are likely unconstitutional. 206 Ariz. 520, 528, ¶ 39 & n.9, 81 P.3d 311, 319 & n.9 (2003). The Court identified several provisions in the Public Finance Omnibus Reconciliation Bill ("ORB") that did not relate to the subject of public finance, even though they involved the expenditure or collection of money and thus indirectly affected public finances. *Id.* The Court also specifically identified the Education ORB as appearing to address multiple subjects on its face. *Id.* That bill, HB 2534, like SB 1476, amended a number of statutes related generally to school funding and likely complemented the appropriations made in the general appropriations bill, but it also contained provisions relating to audits and reporting requirements, among other things. Similarly, in *Litchfield Elementary School District v. Babbitt*, the court held that including a "miscellany" of

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[29] Here, SB 1476 is covered by the plain language of the single subject rule in Article 4, Part 2, Section 20 because, as indicated in its title, it contains appropriations. For example, Section 14 of SB 1476 specifies that $100,000 of the Department of Education's appropriation for school safety shall be used for a pilot program on school emergency readiness. The Arizona Supreme Court has not analyzed whether Article 4, Part 2, Section 20 imposes a stricter single-subject requirement than Section 13. *See Black & White Taxicab Co. v. Standard Oil Co.*, 25 Ariz. 381, 394-95, 218 P. 139, 144 (1923) (citing but not analyzing Article 4, Part 2, § 20). It likely does.

Unlike Section 13, Section 20 does not permit "matters properly connected therewith" to be contained in the bill. *See Clean Elections Institute*, 209 Ariz. at 244 ¶ 7, 99 P.3d at 573 (noting that separate amendment rule has been interpreted more strictly because it lacks this language). Moreover, if Section 20 only required what is already required by Section 13, the language "each embracing but one subject" in Section 20 would be superfluous because Section 13 already applies to "[e]very act." Finally, Section 20 should be stricter because appropriations legislation must pass and the voter referendum (Ariz. Const. art. 4, pt. 1, § 1(3)), is not available for bills for the operation and maintenance of state government. *See* Leshy, *The Arizona State Constitution* 163 (2014).

appropriative and non-appropriative provisions in a bill violates the second sentence of Article 4, Part 2, Section 20. 125 Ariz. 215, 225, 608 P.2d 792, 802 (App. 1980).[30]

Senate Bill 1476 is unconstitutional for the reasons articulated in *Bennett* and *Litchfield Elementary*. It is a hodgepodge of unrelated legislation cobbled together as part of political deal-making to garner passage of the budget by narrow margins in both houses of the Legislature. To be sure, some sections of SB 1476 relate to reconciling substantive law with the Legislature's allocation of funds for K-12 education in the general appropriations bill. For example, Section 4 of the bill sets the base per-student funding amount for fiscal year 2015-2016 at $3,426.74. SOF ¶ 28. Other provisions, however, plainly do not relate to appropriations and therefore cannot be saved by those that do.

Importantly, although Section 7 results in a shift in school funding from the State to local jurisdictions, its real purpose is compliance with the One-Percent Cap in Article 9, Section 18. It sets forth a new substantive requirement and process by which much of the responsibility for funding of additional state aid for education is shifted from the State to local jurisdictions. The addition of Section 7 is therefore not reasonably related to the general subject matter of budget reconciliation for K-12 education. It is in fact a major property tax reform measure requiring its own separate bill and consideration, which should not be part of the budget process. And even those provisions of SB 1476 that do relate in some way to K-12 appropriations are not reasonably related to one another.[31]

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[30] While the first sentence of Section 20 permits the general appropriations bill to cover multiple subjects, it requires that the bill "embrace nothing but appropriations." This is not implicated by SB 1476 because it is not a general appropriations bill, and if it were, several provisions – including Section 7 – would be invalid because they are not appropriations. *League of Ariz. Cities & Towns v. Martin*, 219 Ariz. 556, 561 ¶ 17, 201 P.3d 517, 522 (2009).

[31] For example, Section 8 of the bill adds an additional annual reporting requirement to the duties of the School Facilities Board and Section 2 modifies the contents of another School Facilities Board report; Section 3 changes joint technical education district ("JTED") funding, but only beginning in FY 2017; and Section 3 contains a provision prohibiting school districts from discouraging students from attending courses offered by a JTED. SOF ¶ 28.

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Such independent legislative provisions are separate subjects for purposes of the single subject rule and for this reason SB 1476 must be struck down in its entirety. *Litchfield Elementary*, 125 Ariz. at 226, 608 P.2d at 804 (an act violating the single subject rule is void in its entirety because it is "infected by reason of the combination of its various elements rather than by any invalidity of one component").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant summary judgment on all five counts of their Complaint.

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of December, 2015, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System.

A complete copy of the foregoing mailed and emailed this same date to the following:

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