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SUMMARY OF ARGUMENT

Pima County and Clarence Downy Klinefelter hereby petition this Court to enjoin the Property Tax Oversight Commission (“PTOC”) from enforcing or otherwise administering new A.R.S. § 15-972(K) in Section 7 of Senate Bill 1476 (“SB 1476”), which was enacted by the Arizona Legislature earlier this year.¹

The Legislature, in Section 7 of SB 1476, withdrew certain state-provided school funding, while apparently trying to ensure compliance with [Article 9, Section 18](#) of the Arizona Constitution, which caps primary property taxes for residential property at one percent of full cash value (the “One Percent Cap”). In certain school districts, including Tucson Unified School District (“TUSD”), which is in Pima County, the combined primary property tax rates of the overlapping local taxing jurisdictions exceed the One Percent Cap. Since 1980, the State has provided “additional state aid for education” to a school district whose primary property tax levy is lowered to comply with the One Percent Cap ([A.R.S. § 15-972\(E\)](#)), because of the State’s constitutional obligation to provide for “a general and uniform public school system” ([Ariz. Const. art. 11, § 1](#)).

¹ SB 1476 is located at [2015 Ariz. Sess. Laws ch. 15](#) (1st Reg. Sess.). App., at 15. See n.11, *infra*, regarding judicial notice of the documents included in the Appendix.

Section 7 of SB 1476, however, now caps at \$1 million per county the State's funding of that additional aid. In effect, Section 7 of SB 1476 requires the local taxing jurisdictions within a school district whose tax levy is 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. Simply put, Section 7 of SB 1476 is a state-imposed tax on select groups of local taxpayers for the support of education. It hits southern Arizona particularly hard. According to Joint Legislative Budget Committee ("JLBC") estimates, there are only two counties in which school districts are expected to collectively qualify for more than \$1 million of the additional aid in the next fiscal year: Pinal (\$7,658,951) and Pima (\$18,363,520). App. at 30 and 213.²

Pima County and other local jurisdictions that overlap with TUSD, including Pima Community College District, City of Tucson, and City of South Tucson, must now provide almost all of this funding. That means that some portion of the revenue from Pima County's property tax levy, which is collected from taxpayers countywide, will be levied and collected not for the County's own general support but for the general support of TUSD. TUSD, however, is a jurisdiction within which many of Pima County's taxpayers do

² The spreadsheet at page 213 of the Appendix contains the JLBC estimates, but with the addition of the name of the county in which each district is located.

not live, by which they cannot legally be directly taxed, and for the governing board of which they have no right to vote.

Section 7 of SB 1476 is unconstitutional under the Arizona and U.S. Constitutions for two independent reasons. First, it violates the constitutional separation-of-powers doctrine. Section 7 of SB 1476 tasks PTOC, an administrative commission, with determining how much “additional state aid for education” each overlapping local jurisdiction must transfer to an “affected school district.” The Legislature did not provide adequate guidance for PTOC’s exercise of this authority as required by the separation-of-powers doctrine. Moreover, even if SB 1476 were a valid delegation, PTOC is not a valid executive agency because legislative leadership appoints a majority of its members and maintains control over it.

Second, SB 1476 requires local jurisdictions to transfer their tax revenues to school districts, which results in certain local jurisdictions (in this case, Pima County) being forced to levy a tax for the general support of another (in this case, TUSD). There is nothing intrinsically unique about the groups of taxpayers on whom this burden falls. This violates federal and state guarantees of equal protection and due process. It also constitutes a confiscation of private property for other than a legitimate public purpose, because taxpayers are being taxed for the support of school districts within which they do not live or own property, to compensate those districts for tax

credits given to property owners who *do* live in the districts. Those taxpayers do not get to vote for the school district board members that will ultimately decide how to spend the taxes they have paid; such taxation without representation violates due process.

Petitioners respectfully request special action, declaratory, and injunctive relief against PTOC. In addition, Pima County requests an award of its reasonable attorneys' fees.

JURISDICTIONAL STATEMENT

This Court has original jurisdiction over injunctions and other writs to State officers. [Ariz. Const. art. 6, § 5\(1\)](#); [Fairness & Accountability in Ins. Reform v. Greene](#), 180 Ariz. 582, 586, 886 P.2d 1338, 1342 (1994). This Court should exercise its discretion to accept this special action for the following reasons.

The questions presented are pure constitutional law issues of statewide importance and involve matters of first impression. *See, e.g.,* [League of Ariz. Cities and Towns v. Martin](#), 219 Ariz. 556, 558, ¶ 4, 201 P.3d 517, 519 (2009); [Fairness and Accountability in Ins. Reform](#), 180 Ariz. at 586, 886 P.2d at 1342. This case includes an important separation-of-powers issue, which has been held to justify accepting special action jurisdiction. *See* [State ex rel. Woods v. Block](#), 189 Ariz. 269, 272, 942 P.2d 428, 431 (1997); [Forty-Seventh Legislature v. Napolitano](#), 213 Ariz. 482, 485-86, ¶ 11, 143

P.3d 1023, 1026-27 (2006). This Court can decide the issues solely through its interpretation of constitutional provisions, and there is no need to develop a factual record.

This matter also involves the budget for fiscal year 2016 – an issue of critical public and statewide importance. *See, e.g., [League of Ariz. Cities and Towns](#)*, 219 Ariz. at 558, ¶ 4, 201 P.3d at 519 (accepting jurisdiction because “this case involves a dispute at the highest levels of state government” and requires a “swift determination because it concerns the state budget for the current fiscal year”); *[Hull v. Albrecht](#)*, 192 Ariz. 34, 36, ¶ 7, 960 P.2d 634, 636 (1998) (accepting jurisdiction to address an important issue of statewide significance requiring prompt resolution of the budget); *[State Compensation Fund v. Symington](#)*, 174 Ariz. 188, 191, 848 P.2d 273, 276 (1993) (accepting jurisdiction where the petition “affect[ed] the budget for fiscal year 1992, as well as future budgets”).

Pima County is currently engaged in the process of developing its own budget and calculating a property tax levy for fiscal year 2016, which begins July 1. *See [A.R.S. § 42-17101](#)* (governing body must prepare and adopt “an estimate of the different amounts that will be required to meet the political subdivision’s public expense for the current fiscal year” by the third Monday in July) and [§ 42-17151](#) (property tax is levied on or before the third Monday in August). The Board of Supervisors needs to know – as quickly as possible

and with the finality that only this Court can provide – whether it must levy a tax for the support of TUSD, so that it can adjust the County’s budget and tax levy accordingly and properly state the purpose of the tax, as required by [Article 9, Section 3](#) of the Arizona Constitution.

Likewise, TUSD is making budgeting decisions that are impacted by the resolution of the issues presented by this Petition. Other local jurisdictions are similarly affected and need prompt resolution of these issues so they can budget. Finally, the State will soon begin expending funds and will benefit from a prompt resolution, so that it can take any appropriate action in light of the outcome of this case.

PARTIES

Petitioner Pima County is a body politic organized in accordance with [Article 12, Section 1](#) of the Arizona Constitution. It is a political subdivision of the State of Arizona and was established to aid in the administration of the State’s laws and for the purpose of local self-government. [*Hunt v. Mohave County*](#), 18 Ariz. 480, 483, 162 P. 600, 602 (1917). It has the power to sue and be sued. [A.R.S. § 11-201](#)(A)(1). Pima County is subject to determinations made by PTOC in enforcing or otherwise administering Section 7 of SB 1476. Based on those determinations, Pima County will suffer a concrete and

particularized injury by having to transfer some portion of its revenues to TUSD.³

Petitioner Clarence Downy Klinefelter is a resident of Pima County who lives at 2141 North Ajo Gila Bend Highway, Ajo, Arizona 85321. Mr. Klinefelter's residential property is located in the Ajo Unified School District, over 100 miles from TUSD. Under SB 1476, property taxes Mr. Klinefelter pays to Pima County will be used to subsidize property owners who reside within TUSD and receive a credit on their property tax bill. Yet Mr. Klinefelter cannot vote for the members of the TUSD governing board, the body that ultimately decides how to spend the taxes he is providing.

Respondent PTOC is charged with administering the taxing scheme set forth in new [A.R.S. § 15-972\(K\)](#), which was added in Section 7 of SB 1476. Respondents David Raber, Jim Brodnax, Jeff Lindsey, Kevin McCarthy, and Fred Stiles, are members of PTOC and are named in their official capacities. Under this scheme, PTOC is required to determine the proportion of the One Percent Cap "violation" that is attributable to each taxing jurisdiction within an affected school district. PTOC is then required to determine the amount of money that each taxing jurisdiction must transfer to the school district.

³ The courts have consistently upheld a county's standing to challenge the constitutionality of a state statute. See [Airport Properties v. Maricopa County](#), 195 Ariz. 89, 98, ¶ 31, 985 P.2d 574, 583 (App. 1999).

STATEMENT OF ISSUES

1. Does Section 7 of SB 1476 violate separation of powers in [Article 3](#) of the Arizona Constitution? This includes the following sub-issues:
 - a. Did Section 7 unlawfully delegate legislative power to PTOC?
 - b. Even if PTOC is exercising executive power, is PTOC an invalid executive agency because legislative leadership appoints a majority of its members and maintains control over it?

2. Does SB 1476's requirement that local jurisdictions transfer funds to school districts violate the federal and state equal protection and due process guarantees or the prohibitions on takings in the Arizona and U.S. Constitutions?

STATEMENT OF FACTS

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). School districts in Arizona rely heavily on property taxes for their funding.

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. Ultimately, a base budget is set, and a required amount of funding is calculated. 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](#).⁴

⁴ 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).

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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. 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.⁵

B. The One Percent Cap for Residential Property.

In 1980, as the Legislature was overhauling the school funding system,⁶ voters passed Proposition 106, which added the One Percent Cap. [Ariz. Const. art. 9, § 18\(1\)](#) (“[t]he maximum amount of ad valorem taxes that may be collected from residential property in any tax year shall not exceed one per cent of the property's full cash value as limited by this section”).⁷ The

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Counties are also required to levy a tax on unincorporated areas, at a rate that is half of the QTR. 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](#).

⁵ The Arizona Tax Research Association estimates that \$2.12 of TUSD's 2014 property tax rate is for desegregation expenses. App., at 3.

⁶ A comprehensive school-funding bill was passed in 1981. 1981 Ariz. Sess. Laws, ch. 1, § 2 (1st Reg. Sess.).

⁷ The One Percent Cap applies to the combined primary property tax levy of municipalities, counties, school districts, and community college districts. It

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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 3) property owners.⁸ First, a certain portion of the funding that would be provided by application of the otherwise-applicable school district tax rate to Class 3 properties in the district (see above) is shifted to the State (the “Homeowner Rebate Adjustment”) and provided by the State to the school districts (the “Homeowner Rebate ASAE”⁹). [A.R.S. § 15-972\(B\)-\(D\)](#).

If the aggregate primary property tax rate for a parcel of Class 3 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

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excludes, and therefore does not limit, taxes that are now a part of the “secondary” property tax levy, as well as voter-approved overrides.

⁸ 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. App. at 7.

⁹ “ASAE” refers to “additional state aid for education”.

the school district the amount by which its tax revenues are reduced by this One Percent Cap Adjustment (the “One Percent Cap ASAE”).

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 2016.¹⁰ At issue in this case is SB 1476, the K-12 Education Omnibus Reconciliation Bill (“ORB”). App., at 15.¹¹ Section 7 of SB 1476 adds a new subsection K to [§ 15-972](#). App., at 25-26. This new provision limits the state’s funding of the One Percent Cap ASAE to \$1 million per county

¹⁰ 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 ORBs, 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). 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 note 13, *infra*.

¹¹ The documents referenced in support of these facts are included in the attached Appendix, which contain hyperlinks for those documents that are available on the web. See [Daniels–Hall v. Nat’l Educ. Ass’n](#), 629 F.3d 992, 998–99 (9th Cir.2010) (finding it appropriate to take judicial notice of information made publicly available on government websites where the authenticity of the information was not challenged); [State v. Rojers](#), 216 Ariz. 555, 560-61, ¶¶ 25-26, 169 P.3d 651, 656-57 (App. 2007) (taking judicial notice where records were available on public body’s website). The page numbers used for references to the Appendix are the page numbers in the footer of the PDF document, e.g., Petitioner’s Appendix Page X of Y.

beginning in fiscal year 2016. For any remaining shortfall, it requires PTOC, an administrative commission,¹² 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. 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” 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. If a jurisdiction has a tax rate below its peer jurisdictions, then its proportion of the constitutional violation is zero, and it does not have to transfer funds.

SB 1476 becomes 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. App., at 30. San Fernando and Altar Valley school

¹² PTOC’s existing responsibilities are to provide a uniform methodology for calculating property tax limits, and to check local jurisdictions’ compliance with those limits. A.R.S. §§ [42-17001](#) through [42-17005](#). It has no express rule-making authority.

districts, which are in Pima County, are also expected to qualify for a small amount of One Percent Cap ASAE. App., at 30.

On March 10, 2015, PTOC met and discussed SB 1476. Not surprisingly, its members expressed confusion about how to implement Section 7 of SB 1476. App., at 35. PTOC will continue meeting and will ultimately make the determinations under Section 7 unless enjoined by this Court.

ARGUMENT¹³

I. SB 1476 VIOLATES THE SEPARATION OF POWERS REQUIREMENT IN THE ARIZONA CONSTITUTION.

[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\(1\)](#). Section 7 of SB 1476 violates separation of powers for two reasons.

¹³ SB 1476 is also unconstitutional because: (1) Section 7 imposes a new tax or fee or changes the allocation of taxes among the State and Pima County, but was not approved by a two-thirds vote of both houses of the Arizona Legislature as required by [Article 9, Section 22\(B\)](#); and (2) the bill contains multiple subjects in violation of the single subject rules set forth in Article 4, Part 2, Sections [13](#) and [20](#). Petitioners only seek relief in this special action on the narrower grounds set forth below, but reserve the right to assert all claims against Respondents should this Court decline jurisdiction.

First, it improperly delegates legislative taxing power to PTOC. Second, if Section 7 is a valid delegation of the authority to administer or execute the law, rather than make it, then PTOC's task is unconstitutional because PTOC is not a properly constituted executive agency.

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

Section 7 of SB 1476 impermissibly delegates taxing power to PTOC. In addition to the separation of powers doctrine set forth in [Article 3](#), the Arizona Constitution also contains specific provisions in Article 9 that make clear that the legislative power to tax must be exercised by a body directly accountable to the people, or the people themselves. *See, e.g., 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); *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.

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, e.g., Ariz. Const. art. 4, pt. 2, § 15* (bicameralism); *id. art. 5, § 7* (presentment). 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); [*Tillotson v. Frohmiller*](#), 34 Ariz. 394, 403, 271 P. 867, 870 (1928).

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). As this Court held in [*Duhamel 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).

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 (a due process problem), and impossible for a court to determine whether the standard has been met (a separation of powers problem). [*Tillotson*](#), 34 Ariz. at 403, 271 P. at 870 (“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.”); *see also* [Betts v. Lightning Delivery Co.](#), 42 Ariz. 105, 112, 22 P.2d 827, 830 (1933) (statute giving superintendent broad powers to “make the license [tax] as large or small as he may choose” was unconstitutional).

Section 7 of SB 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. It is not clear whether the determination should be based on a jurisdiction’s size, population, scope of services provided, or any other criteria for that matter.¹⁴ 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.

¹⁴ 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. That bill did not advance out of the House. *See* App. at 36, 40-41.

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.

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.¹⁵ 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.

PTOC cannot make the required allocation without making decisions that are inherently political, subjective and legislative in nature. 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\(E\)](#).

¹⁵ E.g., Bowie Unified School District (\$11.1018) and Double Adobe SD (\$9.8521), both in Cochise County (App., at 44); Hayden/Winkelman SD #41 (\$12.3382) in Gila County (App., at 51); Grand Canyon Unified School District (\$12.0994) in Coconino County (App., at 55).

In sum, Section 7 of SB 1476 requires PTOC (rather than the Legislature) to levy an indeterminate tax on various local jurisdictions, the amount of which – and in some instances, whether the tax will even be levied – depends on discretionary determinations of PTOC. Section 7 of SB 1476 is therefore unconstitutional because it constitutes an improper delegation of legislative authority.

B. Even if PTOC is Exercising Executive Power, Legislative Leadership’s Appointment of PTOC’s Majority Results in the Legislature Executing the Laws.

“[S]eparation of power between the branches of government requires that ‘those who 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). Thus, the legislative branch cannot delegate executive obligations to an entity over which it exerts controls without running afoul of the separation of powers doctrine. 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.” *Id.* at 275-76, 942 P.2d at 434-35. A majority of the PTOC members are appointed by the legislative leaders and therefore PTOC is subject to legislative-branch control.

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.* Applying these factors, the Legislature’s control over PTOC clearly crosses the line that separates the legislative and executive departments. First, the essential nature of the power delegated to PTOC pursuant to Section 7, if that delegation is valid at all, is necessarily executive.¹⁶

Second, the legislative branch¹⁷ maintains control over PTOC. Three of PTOC’s five members are appointed jointly by the Speaker of the House and President of the Senate. [A.R.S. § 42-17002\(B\)\(2\)](#). This Court has struck down an executive branch commission where a *majority* of its members are appointed by legislative representatives. In *Block*, this Court held that the

¹⁶ 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 Section 7 is an unconstitutional delegation of taxing authority. *See Part I(A), supra.*

¹⁷ 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, as this Petition has argued, that the true nature of the delegation is the legislative power to make, rather than merely administer or enforce, the law.

legislative branch “clearly has maintained 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*.

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.” *Id.* at 277, 942 P.2d at 436. There is no indication here that the legislative appointments bring “special expertise” that could not be furnished by the executive. 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 this entity other than to establish superiority over the executive department.

For the fourth factor, courts have looked at “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

an administrative agency the power to impose a tax on various 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. There are carefully drawn checks and balances in the Arizona Constitution for the exercise of that power. *See* Part I(A), *supra*.

Under SB 1476, however, an ostensible executive agency is imposing taxes on local taxpayers. This blurs accountability and the public policy factor clearly demonstrates that PTOC's exercise of its power under Section 7 of SB 1476, even if executive in nature, violates the separation-of-powers doctrine.

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

The Legislature enacted Section 7 of SB 1476 in an effort to comply with its obligation to create a property tax system in compliance with the One Percent Cap in [Article 9, Section 18](#), while also meeting its obligation to fund public education under Article 11 of the Constitution. [Roosevelt Elem. School Dist.](#), 179 Ariz. at 240, 877 P.2d at 813. But the result of SB 1476 is that some local taxing jurisdictions, including Pima County, will be required to levy a general tax within their jurisdictions, a portion of which is for the general

support of a jurisdiction other than the one ostensibly¹⁸ levying the tax. And although legislative decisions about taxation are accorded great deference by the judicial branch, such deference is not appropriate when the decision violates the most basic constitutional guarantees of equal protection, due process, and private property rights as is the case with SB 1476.

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

When a tax scheme is challenged, whether the basis for the challenge is equal protection,¹⁹ due process, violation of private property rights, or—for property taxes—state constitutional uniformity requirements, this Court applies a rational basis test. *E.g.*, [*Big D Construction Corp. v. Court of Appeals*](#), 163 Ariz. 560, 566, 789 P.2d 1061, 1067 (1990) (equal protection); [*Tanque Verde Enterprises v. City of Tucson*](#), 142 Ariz. 536, 541, 691 P.2d

¹⁸ Because the local legislative body really has no discretion with respect to the amount or purpose of the funds, which is a function of the Legislature’s enactment of SB 1476, state statutes regarding school budgeting and funding, and spending decisions made by the school board, the local legislative body is not really the one levying the tax.

¹⁹ The Arizona Constitution’s equal protection clause provides that “No 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”).

302, 307 (1984) (takings); [*Ariz. Downs v. Ariz. Horsemen's Found.*](#), 130 Ariz. 550, 555-57, 637 P.2d 1053, 1058-60 (1981) (equal protection and due process).²⁰

Judicial deference in this context makes sense. Taxation and spending are quintessentially legislative subjects. Redress for unpopular legislative decisions about taxing and spending can be sought at the polls more appropriately than in a courtroom. But this only works when the population that elects the legislative body making those taxing and spending decisions corresponds generally to the population that bears the burden of the tax. When that correspondence is lacking, the political solution is no longer viable. And that is, fundamentally, the problem with SB 1476.

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.²¹ Pima County levies

²⁰ See also [*Wight v. Davidson*](#), 181 U.S. 371, 377 (1901); [*City of Glendale v. Betty*](#), 45 Ariz. 327, 335, 43 P.2d 206, 209 (1935) [*Lindsay v. Industrial Comm'n*](#), 115 Ariz. 254, 256, 564 P.2d 943, 945 (App. 1977).

²¹ The tax levies of 13 of Arizona's 15 counties, and all the other local jurisdictions within those counties, are included in the Appendix to this Petition. 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

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only one general tax – a property tax.²² 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 levy that the payment to TUSD will, of necessity, be made. That means that property owners who live in Pima County, including Mr. Klinefelter, will pay a property tax for the general support of TUSD on property that is not within TUSD’s boundaries, and which could not legally be taxed directly by TUSD.

In fact, because the aggregate primary property tax rate for residential property owners within TUSD already exceeds the One Percent Cap, and they receive a credit on their tax bills for the excess, in a very real sense they will not be paying the portion of the County’s tax levy that will provide the revenues needed for the payment to TUSD, which means that all the County-provided funds will come from taxpayers outside TUSD. In other words, these property owners will pay taxes that will be used to compensate TUSD—a local taxing jurisdiction within which those taxpayers do not live

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share of liability for TUSD’s One Percent Cap ASAE to Pima County. (See discussion of averaging tax rates, in PTOC March 2015 minutes (unapproved), App., at 35, 43-47.)

²² Counties are authorized to levy a general excise tax under [A.R.S. § 42-6103](#), but 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.

and for the governing board of which they do not vote—for the tax credits received by TUSD residential property owners.

Under these circumstances, the taxed population (Pima County) is coextensive with neither the population that elects the State Legislature, nor the population that elects the TUSD school board, the two bodies that are making discretionary taxing and spending decisions. The Pima County Board of Supervisors, which is the body elected by the taxed population, has no discretion with respect to the amount or use of the tax revenues it must collect and provide to TUSD.

Compliance with the One-Percent Cap cannot be accomplished by arbitrarily taxing one class of taxpayers for the benefit another. Doing so violates due process and equal protection clauses, and constitutes a confiscation of private property for other than legitimate public purposes. As this 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). In that case, the court invalidated a property tax that was levied on property within any and all school districts, but the proceeds of which were distributed only to those districts with more than 5 students. See also [*Tennant v. 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.”).

B. SB 1476 violates Arizona’s Property Tax Uniformity Clause.

SB 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). 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 Section 7 of SB 1476 requires a transfer of revenues from one jurisdiction to another, in effect levying an *additional* property tax to support education. This, however, is not a statewide tax.²³ 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. This is beyond the Legislature's authority, and violates the uniformity requirement.

ATTORNEYS' FEES

Petitioner Pima County requests an award of attorney fees and costs pursuant to A.R.S. §§ [12-348.01](#) and [12-341](#). [Section 12-348.01](#) provides that

²³ 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.

the court shall award a county reasonable attorney fees if it is successful party in a lawsuit against this state, or an agency, department, board or commission of this state or a governmental officer acting in the officer's official capacity. See [City of Apache Junction v. Doolittle](#), 237 Ariz. 83, 89, ¶ 23, 345 P.3d 138, 144 (App. 2015).

CONCLUSION

As it has done since it swept funds from municipalities and counties in 2008, the Legislature continues to balance the State budget by shifting State funding obligations to local jurisdictions. Rather than take the politically unpopular step of raising taxes, the Legislature continues to push costs down to local jurisdictions and cut off or drastically limit State funding. But Section 7 of SB 1476 goes further than simply charging all local jurisdictions more for services provided by the State,²⁴ or requiring local jurisdictions to cover costs previously covered by the state.²⁵ In those situations the impact is statewide,

²⁴ See, e.g., 2015 Ariz. Sess. Laws chs. [10](#) & [323](#) (imposing a fee for service for the revenue that is collected by the Arizona Department of Revenue on behalf of local jurisdictions); [2009 Ariz. Sess. Laws, ch. 10, §§ 20 and 32](#) (shifting to counties 100 percent of restoration-to-competency costs and 25 percent of sexually violent predator treatment); [2008 Ariz. Sess. Laws, ch. 291](#), § 12 (allowing the Department of Public Safety to raise \$7.8 million through increased lab fees).

²⁵ See, e.g., [2015 Ariz. Sess. Laws, ch. 12](#), § 1 (lowering state reimbursement of presidential preference election costs for counties from 100 percent of the costs incurred to an amount equal to \$1.25 per active registered voter); [2013 Ariz. Sess. Laws, ch. 5](#) (continuing to suspend reimbursement of half county

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the local jurisdictions on whose taxpayers those obligations are imposed have some control over how to manage the increased costs, and the purpose of the expenditures is related to services benefitting those local residents.

Section 7 of SB 1476, in contrast, imposes a special tax obligation on only select groups of local taxpayers to support jurisdictions within which those taxpayers do not live, and the jurisdictions on whose taxpayers that obligation is imposed have no control over the ultimate expenditure of those funds. Although the plenary power of the Legislature enables it to enlist the counties to assist in its obligation to fund school education, it must follow the Constitution when it does so. It did not do so here.

Pima County respectfully requests that this Court hold Section 7 of SB 1476 unconstitutional and enjoin Respondents from enforcing or otherwise administering new A.R.S. § 15-972(K).

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grand jury costs and indigent representation in capital post-conviction proceedings); [2011 Ariz. Sess. Laws, ch. 33](#) (lowering the State's share of Justices of the Peace salaries to 19.25 percent).

RESPECTFULLY SUBMITTED this 8th day of June, 2015.

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