IN THE
SUPREME COURT OF ARIZONA

No. CV-21-0213-PR

Ct. App. No. 1 CA-TX 20-0001

Arizona Tax Court
No. TX2018-000737

PIMA COUNTY AND
TUCSON UNIFIED SCHOOL DISTRICT NO. 1,

Plaintiffs/Appellees,

v.

STATE OF ARIZONA, ET AL.,

Defendants/Appellants.

PETITION FOR REVIEW OF PIMA COUNTY AND TUCSON UNIFIED SCHOOL DISTRICT NO. 1

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PETITION

This case turns on a purely legal issue of statutory construction. Pima County and Tucson Unified School District No. 1 (TUSD) seek this Court's review of the court of appeals' opinion (App. A), which ignored the statute's plain language, created a clash with the state constitutional provision the statute implements, and then judicially rewrote the statute in an unsuccessful attempt to resolve the constitutional conflict the court of appeals' analysis created. The tax court, which the court of appeals reversed, had correctly rejected as "unworkable" the construction the court of appeals later adopted. This Court should reverse the court of appeals and affirm the tax court.

The statute is A.R.S. § 15-972(E), which the Arizona Constitution mandated to implement its one-percent-of-value limit on the total amount of certain *ad valorem* taxes levied on residential properties (the "1% Limit"). Section 15-972(E) and the accompanying statutory definitions in section 15-101 implement the 1% Limit by distinguishing between those categories of tax subject to the 1% Limit ("primary property taxes") and those not subject ("secondary property taxes"). If the total amount of primary taxes imposed by *all* local authorities exceeds the 1% Limit, the county gives the taxpayer a credit for the excess and then deducts the entire excess—regardless of which local authorities caused it—from the school district's levies. To ensure that a school district does not bear the brunt of all of the authorities' excess, section 15-972(E) requires the State to provide the school district "additional state aid for education" in the amount of *that excess*.

The court of appeals undermined this simple three-step process by importing and misapplying A.R.S. § 15-910(L), added by a 2018 amendment to an unrelated statutory section that concerns school districts' *budgeting of school-desegregation expenses*, and that has nothing to do with implementation of the 1% Limit under section 15-972(E). The court of appeals simply declared that TUSD's levy for court-ordered desegregation expenses was a "secondary property tax" under section 15-910(L) and that the State therefore did not have to include any additional state education aid to TUSD for the $8,113,188.62 aggregate homeowner credit that Pima County had deducted from TUSD's levies.

Incongruously, however, the court of appeals treated the *same* school-desegregation levy as a "primary property tax" for the rest of section 15-972(E), when it agreed that Pima County properly included that amount in totaling the levies subject to the 1% Limit, granted a credit to homeowners for the excess, and then deducted the entire excess from TUSD's levies. The statutory text cannot support the court of appeals' judicial rewriting of section 15-972(E) to make the same levy "primary" for the first two steps of the statute but "secondary" for purposes of the third step—denying TUSD compensatory aid. The court of appeals' revision further subverts the intent of section 15-972(E) by arbitrarily punishing a school district by cutting only its tax levy based on constitutionally excessive levies of *all* local jurisdictions together. This Court should grant review and reverse this misconstruction.

STATEMENT OF THE ISSUE PRESENTED

TUSD's tax levy for desegregation expenses is subject to the Arizona Constitution's 1% Limit on residential property taxes. A.R.S. § 15-972(E) requires Arizona counties to credit homeowners for *all* taxes in excess of that 1% Limit and reduce the school district levy by that amount, and then requires that "[s]uch excess amounts shall also be additional state aid for education for the school district." Can the State avoid its statutory obligation to reimburse those "excess amounts" of the homeowners' credits by declaring amounts levied for a discrete part of the school district's budget to be a "secondary property tax," even though it is subject to the 1% Limit?

FACTUAL AND PROCEDURAL BACKGROUND

A. The State refuses to pay the additional state education aid it owes under the statutory process for implementing the 1% Limit.

For tax year 2019, Pima County complied with the 1% Limit on property taxes by following the process required by A.R.S. § 15-972(E). It first added up all of the taxes subject to the 1% Limit that were levied by various taxing jurisdictions on residential property within TUSD's geographic boundaries. (R.15 ¶ 8.) Although TUSD's levies did not by themselves exceed the 1% Limit, the total amount of levied taxes by all taxing authorities exceeded the 1% Limit by $8,113,188.62. Therefore, the county issued credits in that amount to homeowners against only TUSD's levies. (R.15 ¶¶ 9-10.) Finally, because under the statute the State owed that same amount in additional state aid for education for TUSD's benefit, Pima

County included that amount when it reported its state-aid calculations to the Department of Revenue, as section 15-972(F)–(G) requires. (R.15 ¶ 10.)

TUSD currently operates under a desegregation structural injunction entered in 2013 by the U.S. District Court for the District of Arizona in two consolidated class actions. (R.15 ¶ 1.) For its 2018–2019 fiscal year, TUSD's budget included $63,711,047 for its expenses of complying with the district court's order. (R.15 ¶ 2.) Pima County included in its 1% Limit calculation the amount of the property tax levied by TUSD for desegregation expenses because, under the statutes—section 15-972(E) and the accompanying definitions in section 15-101—TUSD's levy was a "primary property tax." It was not a "secondary property tax" and did not fall under the constitutional exemptions from the 1% Limit because it was neither levied pursuant to an override election nor used to pay off bonds. (R.15 ¶¶ 5, 8.)

Despite Pima County's proper calculations and processing, the State did not report for TUSD or pay *any* additional state aid for education under section 15-972(E). (R.15 ¶ 11.) The State still has not paid any of the roughly $8.1 million that Pima County credited to homeowners and deducted from TUSD's levies for fiscal year 2018–2019. (R.15 ¶ 12.)

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

After the State refused to pay TUSD the aid it was obligated to pay under section 15-972(E), Pima County and TUSD filed suit in the tax court.

(R.1.) On cross-motions for summary judgment, the tax court granted summary judgment for Pima County and TUSD. (R.34 at 4.) In a well-reasoned decision, the tax court held that the State was required to pay additional state aid for education in the amount of Pima County's roughly $8.1 million in taxpayer credits. (R.34 at 4.)

The tax court explained that, in implementing the Arizona Constitution's 1% Limit, A.R.S. § 15-972(E) "explicitly solved at least one potential problem—what to do if the eligible jurisdictions levied taxes in excess of 1%." (R.34 at 2.) In that situation, "three things happen" under section 15-972(E), namely, the "addition step," the "reduction step," and the "pay-back step." (*Id.*) The court concluded that TUSD's school-desegregation levy is a "primary property tax" subject to the 1% Limit and was therefore included in all three statutory steps. (*Id.* at 2–3.) As the court reasoned, "primary property taxes" is a default category that is "specifically defined" for purposes of "the implementation formula" to include only taxes that are not "secondary property taxes." (*Id.* at 2 (citing A.R.S. § 15-101(20)).) Section 15-101(25)'s definition of "secondary property taxes" does not include TUSD's desegregation levies because secondary property taxes are limited to two categories of taxes that are constitutionally exempt from the 1% Limit and plainly do not apply: (1) taxes used to pay off "any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose"; and (2) amounts levied pursuant to an override election. (*Id.* at 2 (quoting A.R.S. § 15-101(25)).) The court rejected as "unworkable"

the State's argument that A.R.S. § 15-910(L), a budgeting restriction adopted in 2018, changed this implementation formula. (*Id.* at 3.)

The tax court further reasoned that the State, by including the desegregation levy in the "addition step" and "reduction step" but excluding it from the "pay-back step," would be "statutorily creat[ing]" a "fourth exemption" to article IX, section 18 of the Arizona Constitution, which recognized only three exemptions from the 1% Limit. (*Id.*) "At a minimum," the court recognized, "such a system would violate the constitutionally imposed requirement that the legislature 'provide by law a system of property taxation consistent with the provisions of this section.'" (*Id.* at 3–4 (quoting Ariz. Const. art. IX, § 18(8)).)

C. The court of appeals reverses, declaring that TUSD's desegregation levies were "primary" for the first two steps but then "secondary" for the final step.

The court of appeals reversed the tax court's determination that the State owed the $8.1 million in additional state aid required to compensate TUSD for Pima County's credits to homeowners. The court of appeals agreed that TUSD's school-desegregation levy was subject to the 1% Limit, and that Pima County therefore properly included the amount in totaling the subject levies by all local taxing authorities, calculating the excess, and granting credits to homeowners against TUSD's levies in the amount of that excess. (Op. ¶¶ 13–14.) But the court of appeals declared that "it does not follow that because desegregation expenses are subject to the one percent

cap, so too must they be subject to reimbursement by the State under A.R.S. § 15-972(E).” (Op. ¶ 14.) The court concluded that legislature had implicitly altered the definition of “secondary property taxes”—and thus indirectly “primary property taxes”—for purposes of section 15-972(E) when it adopted section 15-910(L), which, in the court’s words, “allow[s] a school district subject to a desegregation order to exceed revenue control limits only if it budgets secondary property taxes to pay desegregation expenses.” (*Id.*)

The court of appeals did not explain how a school-desegregation levy could be a “primary property tax” for purposes of the first two steps of section 15-972(E)—resulting in a reduction of TUSD’s levies because of the aggregate “excess” of all levies, but yet somehow be a “secondary property tax” for purposes of the final “pay-back step” of section 15-972(E), which is designed to make a school district whole. *(See* Opp. ¶¶ 15–16.) The court referred to TUSD’s desegregation costs as “non-qualifying expenses” (Op. ¶ 16), even though section 15-972(E) concerns “additional state aid for education” based on the excess of “total primary properties taxes to be levied for all taxing jurisdictions”—*not* based on whether particular budgeted expenses are “qualifying” or “non-qualifying.”

REASONS WHY THE PETITION SHOULD BE GRANTED

I. The court of appeals improperly rewrote A.R.S. § 15-972(E) in a failed attempt to avoid a constitutional clash with the 1% Limit that the court of appeals itself created.

The court of appeals erroneously construed A.R.S. § 15-972(E), which implements the constitutional 1% Limit on certain property taxes, by importing a characterization of school-desegregation levies made in section 15-910(L), an unrelated statute that addresses school-district budgeting, not school-district taxing. As the tax court recognized, this conflation of the two statutes is simply "unworkable" and undermines section 15-972(E)'s implementation of the 1% Limit.

Article IX, section 18 of the Arizona Constitution provides that "[t]he maximum amount of ad valorem taxes that may be collected from residential property in any tax year shall not exceed one per cent of the property's full cash value as limited." Ariz. Const. art. IX, § 18(1). Section 18 sets forth three exceptions to the 1% Limit: (a) taxes levied to pay the principal, interest, and redemption charges for "bonded indebtedness" and certain other "long-term obligations"; (b) taxes levied by certain special-purpose districts "other than … school districts"; and (c) taxes levied "pursuant to an election to exceed a budget, expenditure or tax limitation." Ariz. Const. art. IX, § 18(2). The Constitution explicitly requires the legislature to "provide by law a system of property taxation consistent with the provisions of" the 1% Limit. Ariz. Const. art. IX, § 18(8).

A.R.S. § 15-972(E) is that constitutionally mandated "system." It provides a three-step process for implementing the 1% Limit in conjunction with two key statutory definitions that track the 1% Limit. "Secondary property taxes" are defined in A.R.S. § 15-101(25) to incorporate the three constitutional exceptions to the 1% Limit: "ad valorem taxes used to pay the principal of and the interest and redemption charges on any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose by a school district or a community college district and amounts levied pursuant to an election to exceed a budget, expenditure or tax limitation." A.R.S. § 15-101(25). "Primary property taxes" are defined by default to include the taxes *subject to* the 1% Limit: "all ad valorem taxes except for secondary property taxes." A.R.S. § 15-101(20).

The court of appeals upended this simple implementation of the 1% Limit by looking to A.R.S. § 15-910(L), added in 2018, which conditions the application of companion subsections (G)-(K)—*budgeting* provisions unrelated to the 1% Limit implementation formula. Under sections 15-910(G)–(K), the cost of a court-ordered desegregation is exempt from the *budget limits* that otherwise apply to school districts. Subsection (L) provides that the budget-limit exemption applies *only* if the school district uses "secondary property taxes" to fund the desegregation expenses, and those taxes "levied pursuant to this subsection do not require voter approval":

> Beginning in fiscal year 2018-2019, subsections G through K of this section apply only if the governing board uses revenues

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

A.R.S. § 15-910(L). The court of appeals read the clause "[s]econdary property taxes levied pursuant to this subsection do not require voter approval" as rewriting the statutory definition of "secondary property taxes" in section 15-101(25), even though the legislature did not change that definition, did not amend the three-step implementation process in section 15-972(E), and did not even cross-reference the statutory definitions or implementation process. "It is well settled that where a statute expressly defines certain words and terms used in the statute the court is bound by the legislative definition in all cases where the rights of the parties litigant are based upon that statute." *Pima County v. Sch. Dist. No. One*, 78 Ariz. 250, 252 (1954). Moreover, "modification-by-implication is disfavored by courts when construing statutes." *Pijanowski v. Yuma County*, 202 Ariz. 260, 263 ¶ 14 (App. 2002).

But the court of appeals did not even *consistently* treat TUSD's desegregation levy as a "secondary property tax" for *most* of section

15-972(E). The court of appeals, the tax court, Pima County, TUSD, and the *State* all agree that TUSD's desegregation levy is subject to the 1% Limit because it does not qualify under any of the three constitutional exceptions. Therefore, to avoid a constitutional violation, it *must* be included in Pima County's adding all jurisdictions' "primary property taxes" under section 15-972(E), calculating the excess over the 1% Limit, and providing homeowner credits. Because section 15-972(E) authorizes only totaling "primary property taxes," the school-desegregation levy *must* be a "primary property tax" for purposes of the statute—not a "secondary property tax"—or else the county would have no authority to include it in the statutorily required calculation of homeowner tax credits for "the amount in excess of article IX, section 18, Constitution of Arizona." A.R.S. § 15-972(E).

Yet when the time came for the State to provide "additional state aid for education" to compensate for "*such excess amounts*"—section 15-972(E)'s reference back to the credit given in the prior sentence—the court of appeals made an about-face and declared that the same desegregation levy that it had just treated as a "primary property tax" under the prior sentences of section 15-972(E) now had to be treated as a "secondary property tax" under A.R.S. § 15-910(L), even though it could not qualify as a "secondary property tax" under the definition of that term in section 15-101(25) because it was neither used to pay bonds nor approved by voters—which reflects the *constitutional* exceptions to the 1% Limit.

Section 15-972(E) does not support this judicial revision. It does not create any exceptions to additional state aid. Unlike section 15-910(L), section 15-972(E) is not concerned with the school districts' budgeting or expenses; it does not even use the term "secondary property tax." And it does not modify in any way the methodology or substance of how the county is to calculate the excess over the 1% Limit, grant credits to homeowners in that amount, and then submit for compensatory state education aid to make up for the resulting loss to school districts. The statute requires that the state aid to education be *in the amount of that excess credit*. The statute certainly does not allow the court of appeals to change a "primary property tax" included into the aggregate-levy and homeowner-credit calculation at the last minute into a "secondary property tax" that can be disregarded in the course of what should be the ministerial granting of additional state aid. This inconsistent construction of a single paragraph is untenable and should be reversed.

II. The court of appeals' construction of section 15-972(E) subverts the statutory purpose of state funding of the aggregate constitutional excess.

The court of appeals' rewriting of the statute not only contravenes its express language, but also subverts its purpose. The 1% Limit applies not to school-district levies alone, but to the total property tax burden imposed by *all* local taxing authorities on a particular property. Section 15-972(E) does not single out school districts to bear the brunt of any aggregate excess;

instead, it uses school districts as a *funding mechanism* by which the State can compensate for the aggregate excess attributable to all taxing jurisdictions. In other words, section 15-972(E) uses the existing funding route of state aid for education as the State's conduit for offsetting the effect of the 1% Limit on the total excess burden imposed by all taxing authorities, whether or not any of the excess could be fairly traced to a school district in particular.

The Arizona Constitution *obligated* the legislature to "provide by law a system of property taxation consistent with the provisions of" the 1% Limit, Ariz. Const. art. IX, § 18(8), and the legislature did so with section 15-972(E). That section is the *only* statute that resolves the dilemma created when multiple taxing authorities' individual levies add up to more than the 1% Limit. Section 15-972(E) applies any time there is an overage among the taxing authorities, not just in desegregation situations. Without it, counties would be without a fair, consistent mechanism for choosing which taxing authority's levy to reduce. Importing the budgeting considerations of section 15-910(L) into section 15-972(E) covertly turns the remedial provisions of section 15-972(E)'s "reduction step" and "pay-back step" into a punitive measure, rather than a means of implementing the 1% Limit for *all* taxing jurisdictions collectively.

Section 15-910(L) did effect a change: a school district may continue to avoid *budget* limits that would otherwise apply to desegregation spending if the amounts budgeted for desegregation purposes come from a new kind of "secondary" property tax that does not require voter approval and that is a

separately delineated line item on property owners' tax bills. But whatever section 15-910(L) achieves with respect to budget limits, it must be enforced by other means. It stands alongside, and does not trump, the statutory definitions of section 15-101 that are used by section 15-972(E) in implementing the constitutional 1% Limit on aggregate taxation. "It is the rule of statutory construction that courts will not read into a statute something which is not within the express manifest intention of the Legislature as gathered from the statute itself, and similarly the court will not inflate, expand, stretch or extend the statute to matters not falling within its expressed provisions." *Patches v. Indus. Comm'n*, 220 Ariz. 179, 182 ¶ 10 (App. 2009) (quotation omitted).

If the legislature wishes to amend sections 15-972(E) and 15-101 to eliminate state funding of additional aid for education when levies for federally mandated desegregation expenses are being sacrificed to comply with the 1% Limit, the legislature must do so itself, openly. Inconsistent and unworkable judicial rewriting is not an appropriate tool for effectuating such unexpressed intent. The court of appeals erred by reversing the tax court's correct analysis, and its error should in turn be reversed.

CONCLUSION

This Court should grant review, vacate the court of appeals' decision, and affirm the tax court's judgment.

NOTICE UNDER ARCAP 21(A)

Pima County and TUSD request their attorneys' fees under A.R.S. § 12-348.01.

DATED this 12th day of October, 2021.

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