ARIZONA SUPREME COURT

ARIZONA SCHOOL BOARDS ASSOCIATION, INC., et al., Plaintiffs/Appellees, v. STATE OF ARIZONA, a body politic, Defendant/Appellant	Supreme Court No. T-21-0005-CV Court of Appeals, Division One No. 1 CA-CV 21-0555 Maricopa County Superior Court No. CV2021-012741-000663

STATE OF ARIZONA'S REPLY IN SUPPORT OF PETITION FOR TRANSFER

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Plaintiffs object to this Court transferring this appeal from the Court of Appeals for purposes of appellate review. After waiting a month-and-a-half post-enactment to bring this action, Plaintiffs sought and obtained expedited resolution in the trial court, resulting in a ruling halting at least 58 provisions of Arizona law just two days prior to their effective date. Having obtained expedited trial court process and a result they like, Plaintiffs are now—unsurprisingly—opposed to allowing the State to obtain expedited appellate review. As the State established in its Petition for Transfer, however, and for the same reason Plaintiffs obtained expedited trial court resolution, expedited appellate review is necessary. That need has not changed simply because one party has received a favorable result and desires to preserve that result for as long as possible, leaving multiple provisions of Arizona law in limbo in the meantime.

Putting aside the motive for Plaintiffs' sudden disinterest in expedited resolution, Plaintiffs' arguments in their Response to the State's Petition to Transfer ("Response") are unpersuasive. Plaintiffs do not dispute that the issues presented are purely legal or that they are of statewide importance (nor could they). They do not appear to dispute, at least not strongly, that this Court is likely to grant review regardless of how the Court of Appeals rules.

Instead, after criticizing the State for using five pages to explain why the State is likely to succeed on the merits of the appeal—which is undoubtedly one factor

among several that this Court will consider when determining whether extraordinary circumstances exist for transfer—Plaintiffs use five pages explaining why they will prevail. The State will not rehash its merits arguments here, with one exception. The trial court is the first court in this State to hold that the Legislature's mere use of the term "budget reconciliation" (or some form thereof) in the title of an act thereby allows the courts to make a post-hoc determination whether each of the act's provisions are "substantive policy provisions" or sufficiently related to implementing the budget. Plaintiffs do not dispute that is what the trial court did here.

Instead, Plaintiffs double-down, suggesting that transfer should not occur because "the contents of each bill include substantive policy provisions that plainly are not related to 'budget reconciliation.'" (Resp. at 1-2.) But that position, which the trial court adopted in its ruling, is rife with legal uncertainty. Here are just a few of the questions it raises: Is it correct that substantive policy and implementing the budget process are mutually exclusive? Did Arizona's Founders intend that the courts use the title or single subject requirements to oversee what goes into a budget bill and what does not? What makes something a substantive policy provision? Are courts equipped to determine what constitutes substantive policy and what does not? If so, what standard should courts apply in determining whether a provision sets forth too much substantive policy rather than implementing the budget? Should that

standard be deferential to the Legislature's determination that a provision is sufficiently tied to implementing the budget? The trial court did not provide guidance on any of those questions and others. So even if legislators "have rules attorneys to help them," the Legislature currently does not "know[] the rules" here in the absence of this Court's expedited intervention. (Resp. at 11.) Plaintiffs' attempt to cast the trial court's decision as rote application of the single subject and title requirements misses badly.

Plaintiffs also make the astonishing statement that the trial court's ruling has no impact on the state budget. Even a cursory review of the provisions contained in just one of the affected bills demonstrates that it is already having a material impact. Section 77 of Senate Bill 1823, the feed bill, allocates $389.9 million to the Department of Public Safety ("DPS"). Section 42 of SB 1819, which the trial court struck down in full, exempts the 2022 appropriation for DPS body cameras from oversight by the Information Technology Authorization Committee. This exemption from the statutory oversight process was intended to ensure that funds appropriated to DPS in the feed bill could be expeditiously used to purchase body cameras for public safety officers. The trial court's ruling frustrates the Legislature's attempt to do so and leaves those appropriated funds in limbo (or at least slows

expenditure of the funds).[1]

Similarly, section 89 of the feed bill appropriates $11.4 million to the State Treasurer's Office. Section 6 of SB 1819 establishes an Election Integrity Fund consisting of some of the feed bill's legislative appropriation. Monies in the fund may only be used to pay county recorders for voter education expenses and election security measures. The Treasurer is required to make payments out of the fund based on applications from county recorders. With section 6, the Legislature expressly created a new fund using funds appropriated to the Treasurer in the feed bill. The trial court's ruling nullifies that fund. There are myriad other examples, but these two alone demonstrate why the trial court's ruling has significant budgetary impact and why the Plaintiffs are wrong to argue otherwise (and to delay resolution).

Plaintiffs also do not seriously dispute that the trial court's ruling will potentially subject any existing law passed through a BRB or ORB to constitutional challenge. Rather, they try to obfuscate by claiming the State has not identified any particular law that would be subject to challenge. Given that the trial court did not provide any standards to separate valid budget bills from invalid budget bills, it is impossible to say which particular BRBs or ORBs may now be subject to challenge,

[1] This example further demonstrates the issues caused by the trial court's ruling. Does the Legislature's decision to create such an exemption set forth too much substantive policy or is it sufficiently tied to implementing the budget? No one currently knows how to answer that question.

which is why they all are. Plaintiffs also argue that any such challenge would "likely" be time-barred. Not true. If party A sues party B under a statute passed twenty years ago, party B can still assert as a defense the unconstitutionality of the statute underlying the claim. Party A cannot defeat that defense through the statute of limitations. This is true even if party A is the government. This is just one example of how the trial court's ruling might impact past BRBs and ORBs. *See Manic v. Dawes*, 213 Ariz. 252, 256-57 ¶¶20-23 (App. 2006) (considering a challenge under Ariz. Const. art. IV, pt. 2, §13 to a 1990 act raised in an action initiated in 2005). The Court should grant transfer to avoid this result, which is likely to come to fruition sooner rather than later.

Lastly, Plaintiffs complain that the State's suggested briefing schedule is "unreasonably condensed" but do not explain why. They also do not suggest an alternative schedule, other than "a standard briefing schedule." But a standard briefing schedule on a petition for review would result in supplemental briefing being complete within 20 days. The State's proposed briefing schedule here would have briefing complete within 17 days. Plaintiffs do not give any reason why they cannot draft and submit an answering brief by October 12. Plaintiffs' counsel routinely are involved in expedited election appeals on much faster timelines. Given the gravity of the issues involved and the impact the trial court's ruling is having on the state budget and state law, the State's proposed briefing schedule is more than

reasonable. In addition to the proposed schedule, the State also proposes that any amicus curiae briefs be filed on or before October 18, 2021 (the deadline for the State's reply brief), with no responses from the parties.

The State respectfully requests that the Court grant the State's Petition for Transfer and adopt the State's proposed briefing schedule.

RESPECTFULLY SUBMITTED this 1st day of October, 2021.

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