ARIZONA SUPREME COURT

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

RESPONSE TO THE STATE'S PETITION TO TRANSFER

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Introduction

¶1 The Arizona Constitution requires that "every act" passed by the Legislature: (1) cover only a single subject; and (2) give adequate notice of the bill's contents in the title. Ariz. Const. art. IV, pt. 2, § 13. As the trial court noted (at 15), "[t]his is not new law."

¶2 Yet in the closing days of the 2021 legislative session, the Legislature ignored the clear mandate of our Constitution, and crammed a hodgepodge of substantive law provisions into what are known as "budget reconciliation" bills. In doing so, the Legislature ignored not only the Constitution, but also explicit and repeated rulings of Arizona's appellate courts, which caution that lumping such unrelated provisions "in the same bill tends to undermine the legislative process by stifling valuable debate within government's most important forum of persuasion and policymaking, the legislature." *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 38 (2003).

¶3 As the trial court correctly ruled, the Legislature disregarded these constitutional limits in several ways. First, they passed three bills (HB2898, SB1824, and SB1825) with titles claiming that the contents of the act relate to "budget reconciliation," yet the contents of each bill

include substantive policy provisions that plainly are not related to "budget reconciliation." They also passed a bill (SB1819) with a title claiming that its contents relate only to "budget procedures," but it likewise includes substantive policy legislation that has nothing to do with budget procedures. Moreover, SB1819 covers a hodgepodge of completely unrelated subjects in violation of the single subject rule. The medley of laws in SB1819 are precisely the type of "log-rolling" the single subject rule is intended to prevent. *Ariz. Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 30 (2017).

¶4 The trial court relied on well-settled precedent and properly ruled that each of the challenged laws was passed in violation of the constitution.

Argument

¶5 The State seeks transfer under Rule 19(a)(3), Ariz. R. Civ. App. P., which provides that this Court "may permit the transfer of an appeal . . . if . . . extraordinary circumstances justify transfer." While Plaintiffs do not resist review by this Court if it feels it is appropriate, we respond because the State's arguments in support of its Motion are unfounded.

¶6 The trial court analyzed whether the challenged laws violated the title and single subject rules of Article IV, part 2, § 13 of the Arizona Constitution, pursuant to almost a hundred years of established precedent. The case broke no new ground. While the State invited the trial court to invent an exception to Article IV, part 2, § 13 for budget reconciliation bills ("BRBs"), the trial court correctly rejected this invitation. The clear language of that section applies to "every act."

¶7 The State claims [at 1-2] that the trial court improperly rejected its defenses based on standing and the political question doctrine. But the State omits the facts that it (1) did not even contest standing for three of the four BRBs at issue, and (2) ignored the sworn declarations of Plaintiffs that clearly established their standing to challenge the fourth BRB, SB1819. The trial court correctly disposed of this defense, which presented no novel issues. [Ruling at 4-5, attached as **Exhibit A**]

¶8 The State also claims that the trial court improperly rejected its arguments based on the political question doctrine. Here the State provides a conclusory argument that there are no manageable standards for judicial decisions on whether its legislation complies with the single

subject rule or the title provision of Art. 4, pt. 2, § 13. Respectfully, Arizona courts have been analyzing whether legislation complies with the title and single subject dictates of the constitution since statehood. *E.g.*, *State Board of Control v. Buckstegge*, 18 Ariz. 277 285 (1916); *State v. Sutton*, 115 Ariz. 417, 419 (1977); *Bennett*, 206 Ariz. at 528 ¶ 38.

¶9 The State [at 7-9] also claims that "extraordinary circumstances" exist because: (1) the State is "certain to succeed on the merits" of its appeal, (2) the bills the trial court invalidated involve "state budget questions" that require "prompt resolution," (3) the case requires "clarification" from this Court on "the proper standard" and the "proper remedy" to apply, and (4) the trial court's ruling "would bring about a sea change" in how legislation is passed. None of these contentions is correct.[1]

[1] The State improperly (and haphazardly) addresses the merits of its appeal in its petition to transfer. Indeed, under the single heading "Argument," the State crams five pages of argument disputing the trial court's ruling interspersed with argument urging a transfer. Given the limited issue before this Court at this juncture—i.e. whether transfer is proper—Plaintiffs only briefly address the State's merits arguments and reserve the balance of its arguments for merits briefing in the event the Court grants the petition to transfer.

I. The State is Unlikely to Succeed on Appeal.

¶10 First, the State is not, as it boldly declares [at 9], "certain to succeed" on appeal. At essence, the State is merely claiming (incorrectly) that the trial court got it wrong. That an appellant believes a trial court erred hardly constitutes an "exceptional circumstance" justifying transfer. Ariz. R. Civ. App. P. 19(a)(3). In all events, the State is unlikely to succeed.

¶11 The trial court issued a thorough, well-reasoned ruling declaring that the four challenged bills violate Article IV, part 2, § 13 of the Arizona Constitution. The trial court relied on a century of case law applying this constitutional provision to legislative acts since statehood. And it appreciated [at 2] the crucial purpose of Article IV, part 2, § 13 to "promote transparency and the public's access to information about legislative action."

A. The Trial Court Correctly Held That Each Bill Violates the Title Requirement.

¶12 The title provision in Article IV, part 2, § 13 "was designed to enable legislators and the public upon reading the title to know what to expect in the body of the act so that no one would be surprised as to the subjects dealt with by the act." *Sutton*, 115 Ariz. at 419 (quotation

omitted). "By confining the legislation to the subject contained in the title, neither the members of the legislature nor the people can be misled to vote for something not known to them or intended to be voted for." *White v. Kaibab Rd. Improvement Dist.,* 113 Ariz. 209, 212 (1976). While the "act's title need not be a synopsis or a complete index of the act's provisions," *Hoyle v. Superior Ct. In & For Cty. of Maricopa*, 161 Ariz. 224, 230 (App. 1989), the "title must be worded so that it puts people on notice as to the contents of the act." *White,* 113 Ariz. at 211.

¶13 After carefully reviewing each bill, the trial court found [at 7] that "[t]he words 'budget reconciliation' appear in the title of each bill," and "the Senate Fact Sheets expressly state that the purpose of the BRBs is to '[make] statutory and session law changes ... to implement the FY 2022 state budget.'" By "pairing 'budget reconciliation' to a specific aspect of state government," the trial court explained [at 8], "the Legislature limited the subject matter to budget reconciliation provisions for appropriations for that area." Yet every challenged provision was a substantive policy unconnected to the budget (*e.g.*, a ban on mask mandates or teaching controversial topics). In the end, the trial court rightly held [at 13] that "each of the challenged provisions violates the

title requirement of Section 13" because they are untethered to "budget reconciliation."

B. The Trial Court Correctly Struck Down SB1819 For Violating the Single Subject Rule.

¶14 The "single subject rule" in Article IV, part 2, § 13 provides that "[every act shall embrace but one subject and matters properly connected therewith." The rule "was intended to prevent the pernicious practice of 'logrolling.' . . . A bill that deals with multiple subjects creates a serious 'logrolling' problem because an individual legislator 'is thus forced, in order to secure the enactment of the proposition which he considers the most important, to vote for other of which he disapproves.'" *Bennett,* 206 Ariz. at 528 ¶ 37; *Kiley*, 242 Ariz. at 541 ¶ 30. For purposes of the single subject rule, the "subject" of legislation includes "all matters having a logical or natural connection." *Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980).

¶15 Here, the trial court correctly held [at 13] that SB1819 "consists of multiple, unrelated subjects," from "dog-racing permitting" to "the Governor's emergency powers" to "the definition of a 'newspaper,'" just to name a few. "None of these subjects have any logical connection to each other nor 'fall under some one general idea.'" [*Id.*, citing *Litchfield*,

125 Ariz. at 224)] The trial court also applied the proper remedy: "When an act violates the single subject rule, the whole act fails. *Litchfield*, 125 Ariz. at 226. Severability is not available as a remedy because there is no way for the Court to discern the dominant subject of the act." [Ex. A at 14]

¶16 In short, the trial court got it right, and no extraordinary circumstances exist to take this appeal outside of the normal course.

II. The Trial Court's Ruling Has No Budget Impacts.

¶17 Second, this case does not involve, as the State claims [at 7], questions about the "state budget" that "require[] prompt resolution." (citing *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 2 (2009)). *Ariz. Early Childhood* doesn't support the State. There, this Court considered "whether the legislature acted within its authority when it transferred $7 million . . . from the Early Childhood Development and Health Fund into the state's general fund." *Id.* at 468 ¶ 1. The Court's decision thus had an immediate budgetary impact: it ordered that the "$7 million fund sweep . . . be returned to the Fund." *Id.* at 472 ¶ 19.

¶18 Here, there is zero factual support for the State's vague arguments [at 8] about the ruling's impact on the State's "budgeting

process" and alleged "uncertainty" members of the Legislature face. In fact, the State doesn't even try to explain how the trial court's order has any impact on the state budget. And that's exactly the point. The trial court rightly invalidated the challenged provisions because "[n]one of these measures remotely pertains to the budget or budget reconciliation." [Ex. A at 10]

III. The Trial Court Applied Well-Settled Law.

¶19 Third, the issues the trial court decided need no "clarification" from this Court. The State claims [at 8] that this case "presents the question of whether courts have the constitutional authority to determine whether individual budget reconciliation provisions sufficiently pertain to budgeting and, if so, what standard courts should employ in making that determination." But there's no doubt courts have constitutional authority to determine "whether a branch of state government has exceeded the powers granted by the Arizona Constitution[.]" *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 8 (2006).

¶20 There's also no uncertainty over what standard applies. As the trial court recognized, "Arizona courts have been enforcing the title and single subject rules for decades as evidenced by the number of cases

cited in the parties' briefs and this ruling." [Ex. A at 6] That Arizona courts have not applied the title requirement to the title "budget reconciliation" doesn't mean this case raises a "question this Court has never addressed." Every case presents new facts, and the Court of Appeals is capable of considering and applying longstanding legal principles to the facts here. If this Court wishes to review these issues in the normal course, it would benefit from the appellate court's analysis.

IV. The Trial Court's Ruling Does Not Create New Standards.

¶21 Last, the State's hyperbole about the "sea change" created by the trial court's ruling lacks merit. The State posits [at 2] that the trial court's ruling "carr[ies] serious statewide consequences for the legislative process in Arizona and could now subject hundreds of state laws to challenge on title and single subject grounds." Yet the State points to no examples of laws "now subject . . . to challenge" based on an alleged change in the law.[2] But that is unsurprising, because the trial court's ruling changes nothing.

[2] Of course, the trial court's ruling extends only to the challenged BRBs, and in all events, any challenge to a BRB or ORB from prior years is likely time-barred. *See* A.R.S. § 12-821.

¶22 The Legislature knows the rules. Indeed, Legislators regularly acknowledge and discuss how to do their business within the confines of the Constitutional requirements, and they have rules attorneys to help them. And this Court made clear 18 years ago that Article IV, part 2, § 13 applies to budget reconciliation bills. *Bennett*, 206 Ariz. at 528 ¶¶ 38-39 nn.8-9.[3] Never before has the legislature so ignored the normal process and procedure for enacting laws as they did this session. [Mot. for PI at 15] Lawmakers openly admitted that they were withholding their votes on the budget unless they could include their own pet policies, including ones that already failed during the session. All told, the contention [at 9] that the trial court's ruling will "bring about a sea change in how the Legislature is required to craft BRBs and legislation generally" doesn't hold water.

¶23 As the trial court put it [at 15], "the requirements of Section 13 apply to every act of the Legislature. This is not new law. The Arizona Supreme Court has repeatedly recognized and enforced Section 13's

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[3] The amicus brief of the Senate President, House Speaker, and Governor also acknowledges that the Legislature knows Article IV, part 2, § 13 applies to BRBs. [Amic. Br. at 4 (arguing that the Legislature is "[f]ully cognizant of the Single Subject Rule" and it "revamped its budget process in 2004" to "secure[] compliance with the Single Subject Rule")]

constitutional requirements. The BRBs are not exempt from these requirements."

V. The State's Proposed Briefing Schedule is Unwarranted.

¶24 The State also proposes an unreasonably condensed briefing schedule with the opening brief due October 5, answering brief due October 12, and reply brief due October 18. If the Court accepts the petition to transfer, the Court should set a standard briefing schedule. The State points to no emergency or other good cause for such an accelerated schedule. The State is of course free to file its opening and reply briefs ahead of schedule, but there is no basis to impose such a short time to respond on Plaintiffs.

Conclusion

¶25 At bottom, this case involves constitutional issues the Arizona Court of Appeals has been deciding for decades, with plenty of existing guidance from this Court. The trial court correctly applied this precedent, and no "extraordinary circumstances" warrant transfer to this Court at this time. The Court should consider whether to review this case in the ordinary course.

RESPECTFULLY SUBMITTED this 30th day of September, 2021.

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EXHIBIT A

Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2021012741 09/27/2021

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
P. McKinley
Deputy

ARIZONA SCHOOL BOARDS ASSOCIATION INC., ET AL — ROOPALI HARDIN DESAI

v.

STATE OF ARIZONA, ET AL. — PATRICK IRVINE
JOHN C RICHARDSON
CHRISTOPHER A VISKOVIC
DANIEL J ADELMAN
KRISTEN YOST
MICHAEL S CATLETT
THOMAS J. BASILE

COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE COOPER

RULING RE: DECLARATORY JUDGMENT

Pending before the Court is the Complaint for Declaratory and Injunctive Relief filed August 12, 2021 and fully-briefed Motion for Preliminary Injunction filed August 18, 2021. Having considered the pleadings and counsels' oral argument and for the reasons stated the Court finds:

- Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; Section 2 of SB1825; and SB1819 violate the title and/or subject matter requirements of the Arizona Constitution, Art. IV, pt. 2, §13 (hereinafter "Section 13"), and are therefore void and unenforceable.

- Given the declaration that these provisions are unconstitutional under Section 13, the request for injunctive relief is moot. If non-compliance occurs, further relief is available under A.R.S. §12-1838. Similarly, since HB2898, Section 12 (banning masks in public and charter schools), is unconstitutional under Section 13, the Court need not reach the issue of whether it violates the equal protection clause, Arizona Constitution, Article. II, §13.

OVIEWVIEW OF CLAIMS AND RELIEF REQUESTED

This litigation concerns the validity of four bills recently enacted by the Legislature – HB2898, SB1824, SB1825, and SB1819. Plaintiffs contend that these bills violate the title and single subject requirements of Section 13. They also claim that HB2898 violates the Arizona Constitution's equal protection clause, Article II, §13.

The title and single subject requirements safeguard the legislative process. Section 13 requires that "[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title[.]" The title requirement ensures that the public has notice of proposed legislation and a fair opportunity to participate in the process. The single subject rule precludes legislators from combining unrelated provisions into one bill to garner votes for disfavored measures. Together these requirements promote transparency and the public's access to information about legislative action.

Plaintiffs contend that the Legislature ignored these fundamental rules of legislation in two ways. First, they inserted policy provisions – most of which relate to COVID-19 mitigation measures – into each bill under the title "budget reconciliation." Second, the Legislature combined approximately 30 subjects into a single bill, SB1819. In short, Plaintiffs argue, the Legislature used budget-related bills to pass substantive legislation that has nothing to do with the budget.

In addition to the title and single subject offenses, Plaintiffs claim that HB2898 fails to comply with the equal protection clause under Art. II, § 13 of the Arizona Constitution by banning public and charter schools – but not private schools – from requiring masks to protect against COVID-19.

Plaintiffs seek 1) a declaratory judgment that SB1819; Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; and Section 2 of SB1825 are unconstitutional; and 2) an order enjoining the State and its agents from implementing and enforcing these provisions.

BUDGET RECONCILIATION BILLS (BRBs)

It is undisputed that the bills are "budget reconciliation bills," also known as "BRBs." A BRB is a bill used to implement the appropriations in the State's budget. The Arizona Constitution prohibits including substantive legislation in the general appropriations bill. Art. IV, pt. 2 §20. Any changes in substantive law that are necessary to implement budget allocations must be made in separate BRBs.

Reconciliation bills are well-known to legislators as part of the budget process. For each bill here, legislative staff generated a Senate Fact Sheet, a document that summarizes the bill's contents. The first paragraph of these fact sheets states that the purpose of the bill is to "[make] statutory and session law changes…to implement the FY 2022 state budget." Each fact sheet goes on to explain:

> The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes *to effectuate the budget*. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to *enact these provisions*.

Senate Fact Sheets, 55th Leg., 1st Reg. Sess. (Ariz. June 30, 2021, Exhs. 3, 4, 5, and 6 to Motion (emphasis added)). See *State v. Payne,* 223 Ariz. 555, 563, ft. 5 (App. 2009) ("Arizona courts have cited Senate fact sheets as relevant legislative history and as reflective, though not dispositive, of legislative intent.") *See also* Arizona Legislative Council's Arizona Legislative Manual (Compl. Exh. A) (identifying reconciliation bills as bills that "are used for statutory adjustments that must be implemented to carry out the adopted budget.") [1]Simply put, BRBs are budget-related bills that exist to provide the substantive law necessary to carry out the State's annual appropriations.

In June 2021, the Legislature passed HB2898, SB1824, SB1825, and SB1819 as part of the 2021-2022 budget process. As BRBs, their function was to enact laws to effectuate the budget. It was not to enact laws prohibiting mask mandates, regulating school curriculum, or authorizing special interest projects unrelated to the budget or budget reconciliation.

[1] The Legislative Manual, published in 2003, refers to "omnibus reconciliation bills" which appear to be known now as "budget reconciliation bills."

DEFENSES

Before addressing the validity of the BRBs under Section 13, the Court considers two arguments – standing and political question/justiciability – advanced by the State to resolve the litigation without consideration of the merits.

1. Standing

The State contends that Plaintiffs lack standing to challenge SB1819 because they do not allege facts establishing an injury from SB1819's alleged violations of Section 13.[2]

This matter arises under the Arizona Declaratory Judgments Act, A.R.S. §12-1831, et. seq. In §12-1832, the Act provides that "[a]ny person…whose rights, status or other legal relations are affected by a statute, …may have determined any question of construction or validity arising under the…statute… and obtain a declaration of rights, status or other legal relations thereunder."

Persons who qualify under §12-1832 "are proper parties to bring a suit… to have a statute declared unconstitutional." *Pena v. Fullinwider*, 124 Ariz. 42, 44 (1979). "Person" includes "corporation[s] of any character whatsoever." A.R.S. §12-1843. Organizational plaintiffs may assert: (1) representational standing on behalf of their members, and (2) direct standing in their own right. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004). "[A]n organization has direct standing to sue where…defendant's behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021).

The Court of Appeals rejected an argument based on standing similar to the State's defense. In *American Estate Life Ins. Co. v. State Dept. of Ins,* 116 Ariz. 240 243 (App. 1977), several insurance companies argued that a statute that imposed a tax was unconstitutional under Section 13's title requirement. There, as here, the State argued that the insurance companies had to show prejudice, that is, injury caused by the defective title. Although the court did not characterize the insurance companies' argument as one of standing, it held that the insurance companies were not required to show "prejudice." "They are only required to show that the title did not give adequate notice that the content of the act would impose an additional tax obligation on domestic insurers." *Id.* at 243.

[2] The State agrees that Plaintiffs have standing to challenge HB2898, SB1824, and SB1825.

Plaintiffs are parents, teachers, university professors, physicians, and non-profit organizations that promote training, leadership, and governmental action on behalf of school boards, children, and families, and other interests related to preserving a representative democracy. They have alleged that SB1819 has and will directly affect them. They claim loss of resources (both financial and human resources) due to the Legislature's failure to follow proper legislative process in enacting SB1819.[3] They also claim that the passage of SB1819 without adequate notice deprived them of the ability to participate in the legislative process.[4] Finally, Section 39 of SB1819 bans localities from adopting COVID-19 mitigation measures that impact schools, including mask requirements. Plaintiffs expressly allege the benefits of masking to prevent the spread of COVID-19, the increasing rate of infection among children, and the risk that their children (and the children of persons they represent) will contract the virus without a mask. (Compl. ¶¶ 75-80, 99-108)

The State also argues that the Plaintiffs lack standing to challenge SB1819 because they contest only six provisions of SB1819 and have not shown direct harm from any of those provisions. As discussed above, Plaintiffs do not need to show injury to challenge a statute under Section 13's title requirement. They need only "show that the title did not give adequate notice" of the bill's contents. *Id.*

Declaratory relief does not impose a provision-by-provision test to have standing. Plaintiffs have alleged facts establishing that SB1819, as well as the other bills, have directly affected their rights and resources.

2. Political Question/Justiciability

The State further contends that the Court lacks authority to determine whether the bills violate the Arizona Constitution because the Legislature has sole discretion over the budget and the laws necessary to implement that budget. Therefore, the Legislature and only the Legislature may decide whether the provisions it includes in a BRB are necessary or sufficiently related to effectuate the budget. In making this argument, the State relies on the political question doctrine and the emergency referendum exception. Neither applies here.

a. Political question doctrine

Non-justiciable political questions "involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution

[3] Compl. ¶¶ 9, 12, 13; Lujan Decl. ¶ 11; Edman Decl. ¶ 6.

[4] Compl. ¶¶ 15, 17, 18, 21; Lewis Decl. ¶ 3; Edman Decl. ¶ 10; Lujan Decl. ¶ 7; Kotterman Decl. ¶¶ 9-12.

according to discoverable and manageable standards." *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 7 (2006).

In *Forty-Seventh Legislature,* the Arizona Supreme Court rejected the political question argument. In that case, the issue was whether the Governor's veto of a measure involving "an item of appropriation of money" exceeded her veto authority under the Arizona Constitution. The Governor argued that the issue was a political question outside the court's purview. The Arizona Supreme Court disagreed and held that it was the court's role "to determine whether a branch of government has exceeded the powers granted by the Arizona Constitution" and "[t]he political question doctrine...provides no basis for judicial abstention[.]" *Id.*

The same reasoning applies in this case. The Court is not asked to decide (nor will it) whether the Legislature should enact policy or what that policy should be. The issue here is not *what* the Legislature decided but *how* it decided what it did. The State argues that the BRBs need not comply with the title and single subject requirements despite a constitutional mandate that "[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title[.]" BRBs are not exempt from this mandate. *Hoffman v. Reagan*, 245 Ariz. 313, 316 (2018) (single subject rule applies to "every 'act' considered by the legislature.") Arizona courts have been enforcing the title and single subject rules for decades as evidenced by the number of cases cited in the parties' briefs and this ruling. Whether the Legislature complied with the requirements of Section 13 and whether a provision is reasonably related to "budget reconciliation" are questions properly before the Court.

b. Emergency exception

The emergency referendum exception is found in Art. IV, p. 1, §1. It grants the Legislature the authority to pass "emergency measures" "immediately necessary for the preservation of the public peace health, or safety" and exempt from the referendum power of the people. See *Orme v. Salt River Valley Water Ass'n*, 25 Ariz. 324 (1923). Relying on *Orme,* the Arizona Supreme Court later held that a legislative determination that an emergency exists is not reviewable by the judiciary. *City of Phoenix, v. Landrum & Mills Realty Co.*, 71 Ariz. 382 (1951). *See also Stone v. City of Prescott*, 173 F.3d 1172 (9th Cir. 1999).

Treating BRBs as equivalent to an emergency is not persuasive. If an emergency existed in June 2021, it was due solely to internal disagreements that delayed passage of the budget to the very last minute. That is not the kind of emergency that confers unreviewable authority as an emergency exception. Under the State's theory, the Legislature has complete authority to determine what is necessary to implement the budget including, for example, school curriculum, dog-race permitting, and the definition of "newspaper." This argument negates Section 13 and the stack of appellate decisions enforcing Section 13's requirements for legislation.

Another flaw in the State's argument is this: The referendum emergency exemption found in Art. IV, pt.1 § 1(3) -- which contains no language restricting the decision-making authority of the Legislature – is a grant of power. By contrast, Section 13 explicitly restricts the process the Legislature must follow in enacting legislation. While the emergency exception empowers the Legislature to act, Section 13 limits how they do it. Section 13 does not restrict policy; it does place limitations on the process to ensure transparency and to protect the public's access to information about legislative action.

The political question and emergency exception defenses are misplaced. It is the Court's role to determine whether the Legislature exceeded its constitutional authority.

THE SUBJECT

To assess whether the bills comply with Section 13, the first issue is *what is the subject of each bill?* Section 13 states that every act "shall embrace but one *subject* and matters properly connected therewith, which *subject* shall be expressed in the title[.]" (emphasis added). Therefore, the analysis begins with identifying the subject matter.

Our appellate courts interpret the word "subject" broadly. In *Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980), the Court of Appeals described the subject of a bill as "all matters having a logical or natural connection." It stated that an act should embrace "one general subject," meaning matters that "fall under some one general idea, be so connected with or related to each other, either logically or in in popular understanding, as to be parts of, or germane to, one general subject." *Id.*

Here, the "one general idea" is "budget reconciliation." As stated, the bills are in fact BRBs. The words "budget reconciliation" appear in the title of each bill. And, the Senate Fact Sheets expressly state that the purpose of the BRBs is to "[make] statutory and session law changes…to implement the FY 2022 state budget." (Motion, Exhs. 3, 4, 5, and 6.)

In addition, the contents relate to budget reconciliation. Most of the provisions in HB2898, SB1824, and SB1825 have some natural or logical connection to the appropriations for the named area of the budget. SB1824 covers funding matters for various health-related medical programs, services, and funds. SB1825 effects changes to university and community college-related expenditures. HB2898 amends over 100 statutes pertaining to public and charter schools and related programs. Even some provisions in SB1819 arguably relate to appropriations. Except for the unrelated subjects covered in SB1819, the contents confirm that budget reconciliation is the subject.

The sole distinction among the bills is the particular area of state government the bill impacts – K-12 education, higher education, health, and "budget procedures." As discussed below, these words limit the budget reconciliation measures in the bill to the substantive area identified in the title. Accordingly, HB2898 pertains to budget reconciliation related to K-12 Education appropriations; SB1824 pertains to budget reconciliation for health-related appropriations; for SB1825, budget reconciliation for those portions of the budget related to higher education; and for SB1819, budget reconciliation pertaining to something called "budget procedures."

The State disagrees. It contends that the subject is the substantive area identified in the title. For example, the State argues that subject of SB1824 is "health," and, therefore, any health-related measure may be included in SB1824.

That is not correct. The Legislature has discretion to title a bill but, having picked a title, it must confine the contents to measures that reasonably relate to the title and to each other to form one general subject. *Litchfield, supra.*; *Hoffman, supra.* By pairing "budget reconciliation" to a specific aspect of state government, the Legislature limited the subject matter to budget reconciliation provisions for appropriations for that area. The Legislature cannot simply delete words from the title to justify non-budget reconciliation provisions. Nor can the Court. "A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram,* 245 Ariz. 566, 568 ¶ 11 (2019).

The State's argument would render the concept of "budget reconciliation" meaningless. The *Litchfield* court warned that constitutional provisions should be interpreted liberally "but not so 'foolishly liberal' as to render the constitutional requirements nugatory." 125 Ariz. at 224. In this case, the State's view would allow the Legislature to re-define "budget reconciliation" to mean anything it chooses. Going forward, the Legislature could add any policy or regulatory provision to a BRB, regardless of whether the measure was necessary to implement the budget, without notice to the public. The State's idea of "subject" is not and cannot be the law.

TITLE REQUIREMENT

Next, the Court considers whether the titles of the bills comply with Section 13's title requirement. In other words, do the titles reflect the challenged provisions? The title "must be worded so that it puts people on notice as to the contents of the bill." *State v. Sutton*, 115 Ariz. 417, 419 (1977). The title may not mislead. It should "enable legislators and the public upon reading the title to know what to expect in the body of the act so that no one would be surprised as to the subjects dealt with by the act." *Sutton*, 115 Ariz. at 419 (quotations omitted). The title need not be a complete index, but should disclose "the subject matter of the legislation, and of

the interests that are or may be affected thereby, and to [sic] put anyone having an interest in the subject matter on inquiry." *In re Lewkowitz*, 70 Ariz. 325, 329 (1950) (emphasis and citation omitted).

The title must reflect the legislation included under it. It may be "broad in scope thereby giving notice of a broad range of legislation." *Sutton*, 115 Ariz. at 419. Or, it may be "made narrow and restricted, in which case the legislation must likewise be narrow and restricted." *State Board of Control v. Buckstegge*, 18 Ariz. 277 285 (1916). The Court has no authority to enlarge the title. *White v. Kaibab Road Improvement District, 113 Ariz. 209,* 212 (1976) ("The Constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so.")

Below the Court considers whether the title of each bill gives adequate notice of the challenged provisions.

HB2898

HB2898's title is: AN ACT AMENDING (approximately 100 statutes identified by number only); APPROPRIATING MONIES; RELATING TO KINDERGARTEN THROUGH GRADE TWELVE; BUDGET RECONCILIATION

Plaintiffs challenge Sections 12, 21, and 50. Section 12 prohibits "a county, city, town, school district governing board or charter school governing body" – from "require[ing] the use of face coverings by students or staff," and prohibits school districts and charter schools from "require[ing] a student or teacher to receive a vaccine for COVID-19 or to wear a face covering to participate in in-person instruction." (Compl. ¶ 53)

Section 21 prohibits "a teacher, administrator or other employee of a school district, charter school or state agency who is involved with students and teachers in grades preschool through the twelfth grade" from teaching curriculum "that presents any form of blame or judgment on the basis of race, ethnicity or sex." It further prohibits teaching "concepts," including the idea that an individual "should feel discomfort, guilt, anguish, or any other form of psychological distress because of the individual's race, ethnicity or sex." And it authorizes "disciplinary action" and enforcement action against a teacher who violates this section. (Compl. ¶¶ 57-58)

Section 50 authorizes the Attorney General to initiate civil actions against a "public official, employee or agent of this State" who uses public resources to "organize, plan or execute any activity that impedes or prevents a public school from operating for any period of time," and

against any teacher or other employee "whose violation of [Section 21] resulted in an illegal use of public monies." (Compl. ¶ 59-60)

The Court finds that HB2898's title does not provide notice that the bill would: (1) ban public schools from implementing mask mandates; (2) ban and penalize teaching certain curriculum; or (3) authorize lawsuits against state employees for vaguely-defined conduct related to public schools. None of these measures remotely pertains to the budget or budget reconciliation. Sections 12 and 21 would enact laws regulating public schools disguised as a budget measure. Section 50 would create a civil cause of action. What do these measures have to do with the budget?

In addition, the State's defense of Section 12 banning mask and vaccine mandates in public and charter schools is particularly disturbing. According to the State, this provision is necessary to reconcile the budget because it may "potentially [reduce] overall enrollment and funding." (Response, p. 8) The State fails to present any information from the legislative record to support this argument. More concerning is the suggestion that the Legislature would see this provision as a means to de-fund public and charter schools by discouraging staff and student attendance. There is no question that the bill's title provided no notice of that policy measure.

SB1825

The title of SB1825 is: AN ACT AMENDING (approximately 12 statutes identified by number); APPROPRIATING MONIES; RELATING TO BUDGET RECONCILIATION FOR HIGHER EDUCATION

Plaintiffs challenge Section 2. This section states that, subject to limited exceptions, "universities and community colleges" may not require "that a student obtain a COVID-19 vaccination or show proof of receiving a COVID-19 vaccination or place any conditions on attendance or participation in classes or academic activities, including mandatory testing or face covering usage, if the person chooses not to obtain a COVID-19 vaccination or disclose whether the person has been vaccinated[.]" It also prohibits public universities from implementing testing requirements unless a significant outbreak occurs and, even then, only with approval from the department of health services." (Compl. ¶ 63-64)

The Court finds SB1825's title provides no notice that the bill would prohibit universities and community colleges from requiring vaccinations and alternative COVID-10 mitigation measures.

SB1824

The title of SB1824 is: AN ACT AMENDING (approximately 21 statutes identified by number]; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION

Plaintiffs challenge Sections 12 and 13. Section 12 provides that "an immunization for which a United States Food and Drug Administration emergency use authorization has been issued" cannot be required for school attendance, and immunizations cannot be required for school attendance unless set forth in a rule by the Director of the Department of Health Services. (Compl. ¶ 67)

Section 13 prohibits the State or any city, town, or county "from establishing a COVID-19 vaccine passport," or requiring that any person "be vaccinated for COVID-19" or that any business obtain "proof of the COVID-19 vaccination status of any patron entering the business establishment." (Compl. ¶ 68)

SB1824's title provides no notice that the bill includes provisions (1) providing that an immunization that has an FDA emergency use authorization cannot be required for school attendance; (2) that immunizations cannot be required for school attendance unless set forth in a rule by the Director of the Department of Health Services; or (3) that no city or town can establish "a COVID-19 vaccine passport" or require businesses to obtain proof of vaccination status.

SB1819[5]

SB1819's title is: AN ACT AMENDING (approximately 31 statutes by number only); APPROPRIATING MONIES, RELATING TO STATE BUDGET PROCEDURES

The Complaint challenges six provisions:

Section 4 (16-138) requires the Secretary of State to give access to the statewide voter registration database to any "person or entity that is designated by the legislature" to review voters who are registered to vote for federal only races.

[5] Plaintiffs challenge SB1819 under both the title and single subject requirements.

Section 5 sets forth various requirements for "fraud countermeasures" used in paper ballots.

Section 33 grants the Attorney General the authority to defend election laws and to "speak[] for this state" in "any proceeding in which the validity of a state election law is challenged" "through January 2, 2023."

Section 35 provides that "the secretary of state shall submit to the United States election assistance commission a request that the commission include on the federal voter registration form this state's state-specific instructions to provide proof of citizenship."

Section 39 prohibits a "county, city or town" from adopting "any order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts private businesses, schools, churches or other private entities, including an order, rule, ordinance or regulation that mandates using face coverings, requires closing a business or imposes a curfew."

Section 47 establishes a "special committee" to review the findings of the senate audit of the 2020 general election.

The Court considers whether a BRB titled "relating to budget procedures" provides adequate notice of the challenged provisions.[6] The Court finds that it does not. "Budget procedures" is not defined in the record or the bill. However, looking at the plain meaning of the words, "budget" clearly refers to the 2021-2022 budget process, and the dictionary defines "procedure" as "a particular way of accomplishing something; a series of steps followed in a regular definite order." www.merriam-webster.com. So what do "fraud countermeasures" in ballots (Section 5) have to do with a procedure for the budget? How does proof of citizenship on a federal form advance a budget procedure? These and the other challenged provisions have no relation to the budget and SB1819's title does not provide any notice that they are included in the bill.

The State tries to salvage these provisions by revising them in its Response to include a monetary tether where none exists. For example, the Response describes Section 39 as "directing certain political subdivisions not to spend public funds or resources to enact or enforce certain regulations impacting private businesses." (p. 9). That is not what Section 39 says. It expressly prohibits local jurisdictions from adopting any "order, rule, ordinance or regulation related to mitigating the COVID-19 pandemic that impacts private business, school, churches or other private entities" with no mention or public funds or resources.

[6] Although the words "budget reconciliation" do not appear in the title, the parties agree that SB1819 is a BRB and the bill's the short title as shown in its Senate Fact Sheet is "budget procedures; budget reconciliation; 2021-2022."

In sum, each of the challenged provisions violates the title requirement of Section 13. The titles list statutes by number, identify an area of the state government (K-12, etc.), and state the bills/amendments are for "budget reconciliation." By listing specific statutes and restricting the amendments to "budget reconciliation," the Legislature gave notice that the contents of the BRBs concerned budget reconciliation matters. For the reasons stated, the challenged provisions do not reasonably relate to budget reconciliation matters.

SINGLE SUBJECT RULE

Section 13's single subject rule requires that each bill "embrace some on general subject." *Litchfield,* 125 Ariz. at 224. It is "designed to prevent the evils of omnibus bills, surreptitious, and 'hodgepodge' legislation." *Id.* An act violates this rule if it contains two or more "dissimilar and discordant subjects" that "by no fair intendment can be considered as having any legitimate connection with or relation to each other. *Id.*

The rule is also intended to prevent "logrolling," the practice of lumping multiple subjects into one bill so that a vote to support a favored measure is a vote to support all measures. The Arizona Supreme Court has made it clear that logrolling is unlawful. In *Bennett v. Napolitano*, 206 Ariz. 520, 528 (2003), the issue involved "omnibus reconciliation bills (OMBs)," similar to the BRBs in this case. While deciding the case on other grounds, the Court nevertheless identified the bills' "apparent non-adherence to the single subject rule in the legislative process." The Court described multi-subject bills as a "Hobson's choice," stating "multiple subjects in the same bills tends to undermine the legislative process by stifling valuable debate." *Id.* at 528. *See also Hoffman*, 245 Ariz. at 316 ("The single subject rule is meant to prevent 'log-rolling,' or combining different measures into one bill so that a legislature must approve a disfavored proposition to secure passage of a favored proposition.")

The Court has considered Plaintiff's claim that SB1819 violates the single subject rule. Yes, it does.

SB1819 consists of multiple, unrelated subjects: dog-racing permitting; voter registration; the Governor's emergency powers; the definition of a "newspaper"; local authority to pass COVID-19 mitigation measures; the study committee on missing and indigenous peoples; the practices of social media platforms and internet search engines relating to political contributions; the creation of a "special committee" to review the Maricopa County election "audit"; requirements for the agreement of unit owners to terminate a condominium; the State Capitol Museum, and public retirement systems. None of these subjects have any logical connection to each other nor "fall under some one general idea." *Litchfield*, 125 Ariz. at 224.

The State argues that SB1819 nevertheless satisfies the single subject rule because the provisions share a common purpose as "budget procedures." Respectfully, the Court disagrees. What "budget procedure" does SB1819 pertain to? A procedure for the State Capital Museum? Procedures to administer the Public Safety Personnel Retirement System? No matter how liberally one construes the concept of "subject" for the single subject rule, the array of provisions are in no way related to nor connected with each other or to an identifiable "budget procedure." The bill is classic logrolling – a medley of special interests cobbled together to force a vote for all or none.

REMEDIES

Section 13 and case law provide a remedy for bills that violate the title requirement. Provisions that exceed the scope of the title are void and severed so that the balance of the bill may stand. Section 13 states that any subject "not [be] expressed in the title…shall be void." When a title "particularizes some of the changes to be made by the amendment[s], the legislation is limited to the matters specified and anything beyond them is void, however germane it may be to the subject of the original act." *Hoyle v. Superior Court in and for County of Maricopa,* 161 Ariz. 224, 230 (App. 1989); *Sutton, supra.* (finding title regarding theft-of-credit card did not reflect change to penalties for theft with intent to defraud); *American Estate, supra.* (finding the title failed to express the tax portion of the act).

When an act violates the single subject rule, the whole act fails. *Litchfield*, 125 Ariz. at 226. Severability is not available as a remedy because there is no way for the Court to discern the dominant subject of the act. The Court finds that SB1819 is not severable for this reason.

EQUAL PROTECTION CLAUSE

Because HB2898, Section 12 (banning COVID-19 mitigation measures in public and charter schools), is void, the Court need not reach the issue of whether Section 12 also violates the equal protection clause as asserted in Counts V and VI.

CONCLUSION

In *Bennett,* the Arizona Supreme Court apprised the Legislature that the single subject and title requirements apply to budget-related bills. And, in *Hoffman*, the Court specifically stated the single subject rule applies to every act considered by the Legislature. Despite these warnings, the Legislature passed four budget reconciliation bills that fail to meet the constitutional requirements of Section 13. For the reasons stated, the Court finds that the BRBs violate the title requirement and SB1819 also violates the single subject rule.

IT IS ORDERED finding in favor of Plaintiffs on Counts I and III (declaratory judgment) of the Complaint; and declaring SB1819; Sections 12, 21, and 50 of HB2898; Sections 12 and 13 of SB1824; and Section 2 of SB1825 are unconstitutional and, therefore, void.

IT IS FURTHER ORDERED that the request for injunctive relief in Counts II and IV of the Complaint and the Motion for Preliminary Injunction is moot at this time. Given the Court's declaration that the foregoing matters are unconstitutional, the Court need not rule on injunctive relief. *See Forest Grove School District v. T.A.*, 557 U.S. 230, 247 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute.") If there is non-compliance, further relief based on declaratory judgment is available under A.R.S. §12-1838. *See also Valley Oil Co. v. City of Garland*, 499 S.W.2d 333, 335 (TX App. 1973) (parties are expected to recognize rights declared by the judgment and act accordingly; courts may issue subsequent coercive orders to enforce the judgment if necessary).

IT IS FURTHER ORDERED that the relief requested in Counts V and VI under Art. II, §13 (equal protection clause) is moot at this time. The Court does not reach the issue of whether Section 12 HB2898 violates the equal protection clause because the Court finds Section 12 of HB2898 unconstitutional on other grounds.

IT IS FURTHER ORDERED directing entry of a final judgment pursuant to Rule 54(b), Ariz. R. Civ. Proc. This ruling adjudicates fewer than all of the claims as Plaintiffs' claim for attorneys fees and costs remains. The Court finds no just reason to delay entry of judgment on the claims discussed herein.

IT IS FURTHER ORDERED that no later than **October 12, 2021**, Plaintiffs shall file their Application for Attorneys' Fees and Costs. The State shall file any objection/response by **November 1, 2021**. Plaintiffs shall file a Reply by **November 15, 2021**.

IT IS FURTHER ORDERED denying the State's request to apply this ruling prospectively only. The State asserts that because no Arizona court has "ever" applied the single subject rule to BRBs, this court's ruling should be prospective only and the BRBs should be allowed "to stand." As discussed above, the requirements of Section 13 apply to every act of the Legislature. This is not new law. The Arizona Supreme Court has repeatedly recognized and enforced Section 13's constitutional requirements. The BRBs are not exempt from these requirements.

KATHERINE COOPER
JUDGE OF THE SUPERIOR COURT

FOR ALL IN-PERSON APPEARANCES: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2021-109 and the Maricopa County Superior Court Administrative Order 2021-119 require all individuals entering a court facility in Maricopa County to wear a mask or face covering at all times that they are inside the facility. Any person who refuses to wear a mask or face covering as directed by court personnel will be denied access to the facility. If a participant is denied physical access to a courthouse for refusing to wear a face covering, the participant must contact the assigned judicial division to determine whether the person can participate in the proceeding using an audio or video connection.