

ARIZONA SUPREME COURT

ARIZONA SCHOOL BOARDS
ASSOCIATION, INC., et al.,

Plaintiffs/Appellees,

v.

STATE OF ARIZONA, a body politic,

Defendant/Appellant

Supreme Court
No.

Court of Appeals, Division One
No. 1 CA-CV 21-0555

Maricopa County Superior Court
No. CV2021-012741-000663

STATE OF ARIZONA'S PETITION FOR TRANSFER

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INTRODUCTION

This appeal concerns the constitutionality of multiple budget reconciliation bills duly enacted during the 2021 legislative session. Plaintiffs claim that the budget reconciliation bills (“BRBs”) for kindergarten through grade twelve (HB 2898), higher education (SB 1825), and health (SB 1824) violate the Arizona Constitution’s title requirement. Plaintiffs claim that the state budget procedures BRB (SB 1819) violates the Arizona Constitution’s title and single-subject requirements. In the trial court, Plaintiffs sought declaratory and injunctive relief.

Plaintiffs’ claims should have failed for several reasons. First, Plaintiffs lack standing to challenge the state budget procedures BRB (SB 1819)—none of the provisions contained therein will cause any of the Plaintiffs individualized harm. Second, Plaintiffs’ argument that the challenged provisions are not necessary to implement or carry out appropriations raises a political question assigned to the elected branches of government with no manageable standard for decision. Third, the BRBs are constitutional. Each of the provisions contained therein relate directly or indirectly to the subject of the title. And each of the provisions contained in SB 1819 are germane to the subject contained in its title—state budget procedures. Finally, even if SB 1819 did not comply with the single subject rule, the trial court should only have struck down those provisions that Plaintiffs have established are not germane to state budget procedures.

The trial court, in a sweeping ruling, instead concluded that each of the challenged provisions violated the title requirement and that SB 1819 violated the title and single subject rule. In so doing, the trial court nullified 58 provisions of state law, all of which were scheduled to go into effect just two days later, on September 29, 2021. The trial court's ruling is legally erroneous in numerous respects. Those multiple flaws carry 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. The trial court's ruling carries significant implications for the operation of state government and the State will continue to suffer harm if the trial court's ruling is not swiftly overturned, allowing the challenged provisions to immediately go into effect. Thus, transfer to this Court is warranted.

BACKGROUND

The Arizona Constitution provides that “[t]he general appropriation bill shall embrace nothing but appropriations.” Ariz. Const. art. IV, pt. 2 § 20. Because of that restriction, the Legislature has always utilized a bifurcated budget process. First, the Legislature enacts a general appropriation (or “feed”) bill that contains only specific monetary disbursements to state agencies, departments, and political subdivisions. See 2021 Ariz. Session Laws, ch. 408 (S.B. 1823). Second, an appropriation is often connected with, or conditioned upon, a public policy

determination, which often requires amending Arizona law. Under the Arizona Constitution, any such amendments to Arizona law must be contained in separate bills, not in the feed bill. *See Sellers v. Frohmler*, 42 Ariz. 239, 248 (1933) (“[T]he inclusion of such legislation in the general appropriation bill is forbidden.”). The Arizona Constitution also provides that every act must embrace “but one subject and matters properly connected therewith, which subject shall be expressed in the title.” Ariz. Const. art. 4, pt. 2, § 13. To abide by that restriction, the Legislature has always placed substantive amendments associated with the budget into separate reconciliation bills centered around specific subject matters.

Prior to 2004, the Legislature placed substantive budget amendments into three “omnibus reconciliation bills” (or “ORBs”) pertaining to (1) public finance, (2) education, and (3) health and welfare. Starting in 2004, the Legislature began placing substantive budget amendments into a series of between eight and ten budget reconciliation bills. In this way, the Legislature segments all substantive budget amendments into discrete subject matters and thereby complies with the single subject and title requirements. On June 30, 2021, the Legislature approved, and the Governor signed, eight BRBs to carry out the fiscal 2022 feed bill. The eight BRBs were as follows:

1. Criminal Justice, *see* Ariz. Session Laws ch. 403 (HB 2893);
2. K-12 Education, *see* Ariz. Session Laws ch. 404 (HB 2898);

3. Budget Procedures, *see* Ariz. Session Laws ch. 405 (SB 1819);
4. Environment, *see* Ariz. Session Laws ch. 407 (SB 1822);
5. Health, *see* Ariz. Session Laws ch. 409 (SB 1824);
6. Higher Education, *see* Ariz. Session Laws ch. 410 (SB 1825);
7. Revenue, *see* Ariz. Session Laws ch. 411 (SB 1827);
8. Transportation, *see* Ariz. Session Laws ch. 413 (SB 1829).

In so doing, the Legislature discharged its constitutional duty to fund state government while fully complying with the constitutional subject and title requirements.

A month and a half later, on August 12, 2021, Plaintiffs filed a complaint against the State of Arizona (“State”), claiming that HB 2898, SB 1824, SB 1825, and SB 1819 violate the title requirement and that SB 1819 violates the single subject requirement.¹ Plaintiffs requested that specific provisions in HB 2898, SB 1824, and SB 1825 be declared unconstitutional and enjoined. Plaintiffs requested that SB 1819 be declared unconstitutional and enjoined in its entirety, or alternatively that specific provisions contained therein be declared unconstitutional and enjoined. Plaintiffs also claimed that section 12 of HB 2898 violated Arizona Equal Protection Clause. *See* Ariz. Const. art. 2, § 13.

¹ The City of Phoenix separately filed a lawsuit claiming that HB 2893 violated the single subject and title requirements. *See* CV2021-012955, Maricopa County Super. Ct.

More specifically, with respect to HB 2898, Plaintiffs challenged sections 12, 21, and 50. Those provisions address the operations of publicly-funded schools, including whether public monies can be spent to teach critical race theory and whether publicly-funded school can condition employment or attendance on wearing face coverings or obtaining COVID-19 vaccinations.

With respect to SB 1825, Plaintiffs challenged part of section 2, which adds two statutes to Title 15 and addresses the operations of the Board of Regents, public universities and community colleges, including whether those publicly-funded entities may condition attendance or employment on wearing face coverings, obtaining a COVID-19 vaccination, or undergoing testing.

With respect to SB 1824, Plaintiffs challenged sections 12 and 13, which clarify when public funds can be expended to mandate public health measures, including when schools, including those that are publicly-funded, can mandate vaccines subject to emergency use authorization and when the publicly-funded Department of Health may require vaccination for school attendance.

Finally, with respect to SB 1819, Plaintiffs challenged section 4, 5, 33, 35, 39, and 47. Those provisions (1) regulate the use of budget funds by state agencies relating to voter registration in Arizona, including to provide voter registration assistance (§ 4); (2) limit the use of budget funds to purchase specified ballot paper (§ 5); (3) direct which state officer shall expend state resources in defending

state election laws and intervening in actions challenging Arizona's election laws (§ 33); (4) direct the Secretary of State to expend state resources notifying a federal body of certain information (§ 35); (5) direct certain political subdivisions to not spend public funds or resources to enact or enforce certain regulations impacting private businesses (§ 39); and (6) establish a special committee consisting of senate members that will be funded from the state budget (§ 47).

After full briefing on Plaintiffs' motion for preliminary injunction, the trial court held oral argument on September 13, 2021. During that hearing, the parties agreed that, under Rule of Civil Procedure 65(a)(2)(A), the court should advance the trial on the merits and consolidate it with the hearing on Plaintiffs' motion for preliminary injunction.

On the afternoon of September 27, 2021, the trial court issued a Ruling re: Declaratory Judgment, declaring all challenged provisions unconstitutional under the title requirement and declaring all provisions of SB 1819 unconstitutional under the single subject rule. Given those declarations, the Court concluded that Plaintiffs' requests for injunctive relief and their claim under Arizona's Equal Protection Clause were moot. The trial court entered partial final judgment under Rule of Civil Procedure 54(b). The State immediately filed a notice of appeal, followed by an emergency motion to open appeal, which was granted on September 28, 2021.

ARGUMENT

The State intends to litigate its appeal in the Court of Appeals if necessary, but the circumstances warrant immediate transfer to this Court, with expedited briefing and decision. Arizona Rule of Civil Appellate Procedure 19(a) provides:

The Supreme Court may permit the transfer of an appeal pending in the Court of Appeals to the Supreme Court if . . . extraordinary circumstances justify transfer.

Extraordinary circumstances exist here and warrant immediate Supreme Court review.

On the eve of their effective date, the trial court struck down 58 sections of bills. The trial court's ruling impacts public and charter school students and employees, university students and employees, election officials, healthcare officials, local governments, and a multitude of state agencies, just to name some of those affected. As the Court has previously acknowledged, state budget questions by their very nature "require[] prompt resolution." *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶2 (2009). That is particularly true here, and the most effective way for the State to obtain prompt resolution is through immediate transfer to this Court, followed by expedited briefing and decision.

The issues presented are purely legal in nature and require clarification from this Court. See *Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 485-86

¶11 (2006) (granting special action review because the case required the Court to “construe the language of the constitution and declare what the constitution requires”). For example, the case presents the question of the proper standard to be used when determining whether a plaintiff has standing to challenge legislation under the title and subject requirements. It also 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. It presents the question of how the title and subject requirements apply to budget reconciliation bills, a question this Court has never addressed.

And it presents the question of the proper remedy when a statutory provision violates the single subject requirement. While the Court of Appeals has concluded that when an act violates the single subject requirement, the whole act fails, that is inconsistent with the Arizona Constitution, which provides that any violative act “shall be void only as to so much thereof as shall not be embraced in the title.” Ariz. Const., art. IV, pt. 2, § 13; *Litchfield Elementary Sch. Dist. No. 79 v. Babbitt*, 125 Ariz. 215, 226 (App. 1980).

By ruling in the manner it did, not only did the trial court overstep the separation of powers, but it did so in a way that has injected significant uncertainty into the budgeting process in Arizona. The single subject and title standards the

trial court employed would bring about a sea change in how the Legislature is required to craft BRBs and legislation generally. For example, the trial court has created a titling standard that will be nearly impossible to meet. The Legislature and Governor require immediate and swift guidance from this Court on the standard that courts will use to judge the constitutionality of its budget bills. See *State Comp. Fund v. Symington*, 174 Ariz. 188, 192 (1993) (accepting special action jurisdiction “so that the legislative and executive branches know where they stand and can take such action as they determine necessary relative to budgetary matters”).

Moreover, the State is certain to succeed on the merits of Plaintiffs’ claims. To begin, the trial court erroneously found that plaintiffs had standing to challenge SB 1819, despite that the challenged provisions contained therein will cause no direct harm to Plaintiffs. The trial court did so based on the erroneous view that Plaintiffs need not show injury to challenge a statute under the Constitution’s title requirement and that seeking declaratory relief excuses a plaintiff from having to show that an enacted provision will cause the plaintiff harm.

The trial court also held that courts in Arizona now have the power to determine whether a statutory provision contained within a BRB sufficiently pertains to the budget or budget reconciliation. The trial court is the first court in Arizona to hold that the judicial power encompasses reviewing budget bills to

determine whether the provisions contained therein sufficiently pertain to budgeting or budget reconciliation.

The trial court then erroneously applied the title and subject requirements to the BRBs at issue. Rather than ask whether the challenged provisions relate directly or indirectly to the subject of the title, the trial court asked whether the title of each BRB gave notice that the bill would contain the challenged provisions. For example, the trial court erroneously struck down the challenged provision in SB 1825 because “SB 1825’s title provides no notice that the bill would prohibit universities and community colleges from requiring vaccinations and alternative COVID-10 [sic] mitigation measures.” Is so doing, the trial court misstated and misapplied the legal standard for the title requirement. Similarly, rather than ask whether the challenged provisions in SB 1819 are germane to the subject of state budget procedures, the trial court incorrectly analyzed primarily whether the challenged provisions are “related to or connected with each other.”

Finally, the trial court refused to apply its ruling only prospectively and struck down SB 1819 in full, rather than only excise the challenged provisions. The Arizona Constitution unambiguously provides that an act embracing more than one subject “shall be void only as to so much thereof as shall not be embraced in the title.” Ariz. Const., art. IV, pt. 2, § 13. The trial court’s remedy is inconsistent with that constitutional dictate.

Given the importance of this case, the legal issues presented, and the practical impact of the trial court's ruling on dozens of Arizona statutes and the legislative and budgeting process, prompt resolution is required to prevent irreparable harm to the State and Arizona's constitutional structure. This appeal raises multiple issues of statewide importance that immediately affect the elected branches of government and millions of Arizona citizens. This Court should grant the petition to transfer and set an expedited briefing schedule to resolve this appeal as quickly as possible.

CONCLUSION

The above factors, which would militate in favor of granting special action jurisdiction, also militate in favor of granting this petition for transfer. If this case remains in the Court of Appeals, it will almost certainly reach this Court on a petition for review. Because of the important constitutional issues raised and in the interest of judicial economy, the Court should grant the petition for transfer.

RESPECTFULLY SUBMITTED this 28th day of September, 2021.

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