SUPREME COURT

STATE OF ARIZONA

HAROLD VANGILDER, et al. Plaintiffs/Appellees/Cross-Appellants, v. ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellee. PINAL COUNTY and PINAL REGIONAL TRANSPORTATION AUTHORITY, Defendants/Appellants/Cross-Appellees.	Supreme Court No. CV-20-0040-PR Court of Appeals Division One No. 1 CA-TX 19-0001 Arizona Tax Court No. TX2017-000663

PINAL COUNTY'S AND PINAL REGIONAL TRANSPORTATION AUTHORITY'S SUPPLEMENTAL BRIEF

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Pinal County and the Pinal County Regional Transportation Authority ("RTA") (collectively, "Respondents") submit the following Supplemental Brief for the Court's consideration.

I. THE BALLOT APPROVED BY THE VOTERS COMPLIED WITH THE CONTROLLING STATUTES.

The voters' approval of the Pinal County transportation excise tax followed and met the requirements of the controlling statutes, A.R.S. §§ 42-6106 and 48-5314. For an election called to approve the levy of a transportation excise tax, A.R.S. § 48-5314(E) states, in relevant part, the following "shall . . . be printed on the official ballot:"

> 1. The designation of the measure as follows: "Relating to county transportation excise (sales) taxes"
>
> * * *
>
> 3. The questions submitted to the voters as follows:
>
> * * *
>
> II. Do you favor the levy of a transaction privilege (sales) tax for regional transportation purposes in _____ county? YES _____ NO _____
>
> (A "YES" vote has the effect of imposing a transaction privilege (sales) tax in _____ county for _____ years to provide funding for the transportation projects contained in the regional transportation plan.)
>
> (A "NO" vote has the effect of rejecting the transaction privilege (sales) tax for transportation purposes in _____ county.)

If Respondents had sought approval for a twenty (20) year transportation excise tax without a variable or modified rate, the statute would have required the ballot to read as follows (changes to statutory language underlined):

Relating to county transportation excise (sales) taxes

* * *

~~H.~~ Do you favor the levy of a transaction privilege (sales) tax for regional transportation purposes in Pinal County?
YES _____ NO _____

~~(~~A "YES" vote has the effect of imposing a transaction privilege (sales) tax in Pinal County for twenty (20) years to provide funding for the transportation projects contained in the Regional Transportation Plan.~~)~~

~~(~~A "NO" vote has the effect of rejecting the transaction privilege (sales) tax for transportation purposes in Pinal County.~~)~~

Because the proposal submitted to the voters included a variable or modified tax rate, however, the ballot also had to include language about that proposal. *See* A.R.S. § 42-6106(C). Unlike the required language shown above, the statutes do not specify exactly how details of the variable or modified rate should be added to the ballot language. Consequently, the language of Proposition 417 was written as follows to include both the required statutory language and the specifics of the variable or modified rate (additional language in bold):

Relating to county transportation excise (sales) taxes

* * *

Do you favor the levy of a transportation excise (sales) tax including at a rate equal to one-half percent (0.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail; provided that such rate shall become a variable or modified rate such that when applied in any case when the gross income from the sale of a single item of tangible personal property exceeds ten thousand dollars ($10,000), the one-half percent (0.5%) tax rate shall apply to the first ten thousand dollars ($10,000), and above ten thousand dollars ($10,000), the measure of tax shall be a rate of zero percent (0.0%), in Pinal County for twenty (20) years to provide funding for the transportation elements contained in the Pinal Regional Transportation Plan?

~~H.~~ Do you favor the levy of a transaction privilege (sales) tax for regional transportation purposes**, including at a variable or modified rate,** in Pinal County?
YES _____ NO _____

~~(~~A "YES" vote has the effect of imposing a transaction privilege (sales) tax in Pinal County**, including at a variable or modified rate,** for twenty (20) years to provide funding for the transportation projects contained in the Regional Transportation Plan.~~)~~

~~(~~A "NO" vote has the effect of rejecting the transaction privilege (sales) tax for transportation purposes in Pinal County.~~)~~

The new paragraph consists of the exact language required by the statutes, plus added language (beginning with "including" and ending with "(0.0%)") for purposes of explaining the proposed variable or modified rate to be included in the transportation excise tax.

Plaintiffs repeatedly argue that a ***statute imposing a tax*** must precisely articulate what is being taxed.[1] Proposition 417, however, does not levy or impose any tax. IOR 25–26; Appendix at APPV2-006 (*See* Respondents' Supporting Statement of Facts ("SSOF") at ¶ 20). The plain language of the statutes makes this clear. A.R.S. § 48-5314(A)(2) states, "the issue of levying a transportation excise tax pursuant to § 42-6106" shall be submitted to the voters. Not the actual tax, but the "issue of levying" a tax. This is plain and unambiguous language that cannot be ignored. *See, e.g.*, *Scottsdale Ins. Co. v. Cendejas*, 220 Ariz. 281, 287–88 (App. 2009) ("When interpreting a statute, if the language is unambiguous, we give effect to the language as written."); *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296 (2007) (internal quotations and citation omitted) ("Each word, phrase, clause and sentence [of a statute] must be given meaning so that no part will be void[.]"). Further, A.R.S. § 42-6106(A) provides: "If approved by the qualified electors voting at a countywide election, the regional transportation authority in any

[1] Although it is frequently stated that statutes imposing taxes must be strictly construed, this Court has made it clear in the similar context of tax exemptions that a tax exemption "should not be so strictly construed as to defeat or destroy the [legislative] intent and purpose." *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447, ¶ 10 (2004) (internal quotations and citation omitted). The same rule should apply to interpretations of tax statutes. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 362 (2012) ("*Reading Law*") ("Like any other governmental intrusion on property or personal freedom, a tax statute should be given its fair meaning, and this includes a fair interpretation of any exceptions it contains.").

county shall levy" the tax. Approval by the voters is not self-executing. The actual levy of the tax depends on subsequent action by the RTA.

Of course, the statutes do not ask voters to blindly approve some unknown future assessment. The Legislature requires the mailing of a detailed publicity pamphlet to each household containing a registered voter. *See* A.R.S. § 48-5314(C). The publicity pamphlet must contain "the rate of the transportation excise tax, the number of years the tax will be in effect and the projected annual and cumulative amount of revenues to be raised." A.R.S. § 48-5314(C)(3). The publicity pamphlet is an integral part of the statutory process for approving a transportation excise tax. Reading the statute as a whole, as we must, the Legislature plainly intended for voters to consider the contents of the publicity pamphlet and regarded it as providing the necessary context for the overall proposition. *E.g.*, *State v. Moerman*, 182 Ariz. 255, 260 (App. 1994) (emphasis in original) ("[The Court] must examine the statute *as a whole* and give harmonious effect to *all* its sections."). In other words, Proposition 417 was not just the ballot language. It also was the information provided to voters through the publicity pamphlet. Considering the ballot language without the context of the publicity pamphlet is contrary to legislative intent.

Moreover, the phrase "transportation excise tax" is not simply a general authorization to impose some type of tax. "Transportation excise tax" is a precisely described term in A.R.S. § 42-6106, particularly in subsection B, which sets

maximum rates and provides which tax classifications will be taxed. The mandatory ballot language included in A.R.S. § 48-5314(E), which informs voters the proposition is "[r]elating to county transportation excise (sales) taxes" and goes on to ask whether they "favor the levy of a transaction privilege (sales) tax for regional transportation purposes[,]" effectively incorporates by reference the provisions of A.R.S. § 42-6106(B). If the mandatory ballot language was itself a tax statute or ordinance, failing to include details regarding what is being taxed and at what rate would be fatal. It is, therefore, clear that the Legislature does not regard the required voter approval as levying a tax. Moreover, because the publicity pamphlet included all of the details of the proposed tax A.R.S. § 42-6106 requires, the voters were fully informed about the proposal.

The statutory requirement that the ballot only include the minimum necessary language to allow voters to indicate whether they favor the levy of a transportation excise tax further negates any argument that Proposition 417's ballot language only addressed a retail classification tax. Voters were asked a specific question: Do you favor the levy of a county transportation excise tax? IOR 25–26; Appendix at APPV2-006 (SSOF at ¶ 20). As discussed above, a county transportation excise tax is a specific term that cannot include only a tax on retail. No party disputes this. Because the proposal included a variable or modified tax rate, the ballot language also had to include language about that proposal. *See* A.R.S. § 42-6106(C). The

additional required language does not change the basic question the voters were asked—whether they favored the imposition of a transportation excise tax. *See* IOR 25–26; Appendix at APPV2-006 (SSOF at ¶ 20). Any question about what that meant was answered by the publicity pamphlet and the statutory language detailing what a "transportation excise tax" encompasses. *See* A.R.S. § 42-6106.

Considering this context, which the Legislature constructed in the controlling statutes, Plaintiffs' interpretation of the ballot language as only authorizing a tax on retail is untenable. First, Plaintiffs' interpretation would have the voters approving a tax that, as Plaintiffs acknowledge, cannot lawfully be imposed (i.e., a transportation excise tax only on retail). Second, Plaintiffs' interpretation requires the Court to ignore key portions of the ballot language—most importantly, the statutory term "transportation excise (sales) tax" and the term "including." *E.g.*, *Herman v. City of Tucson*, 197 Ariz. 430, 434, ¶ 14 (App. 1999) (explaining that the court should avoid interpreting a statute to render any language surplusage). Pursuant to applicable canons of construction, it is clear the word "including" was intended to modify the last antecedent term, "transportation excise (sales) tax," and not the tax rate. *Phx. Control Sys., Inc. v. Ins. Co. of N. Am.*, 165 Ariz. 31, 34 (1990) ("The last antecedent rule is recognized in Arizona and requires that a qualifying phrase be applied to the word or phrase immediately preceding as long as there is no contrary intent indicated."); *see also* Black's Law Dictionary 882 (The last

antecedent rule is "[a] canon of statutory construction that relative or qualifying words or phrases are to be applied to the words or phrases immediately preceding, and as not extending to or including other words, phrases, or clauses more remote[.]"). Moreover, for the sentence to read logically, the tax on retailers has to be "included" within something, and the only reasonable something is the full "transportation excise tax" described in A.R.S. § 42-6106. The voters knew this; the publicity pamphlet told them so. As the Legislature provided through its specific statutory scheme, the ballot language was to be read in context, and the context included the publicity pamphlet and the statutory description of "transportation excise tax."

For these reasons, any assertions that the Pinal County transportation excise tax only applies to retail, or that the ballot language was incorrect, must be rejected.

II. THE JUNE 2017 RESOLUTION WAS SUFFICIENT UNDER THE STATUTES.

The RTA adopted an infrastructure plan by resolution on June 5, 2017 (the "Resolution"), with the title of the Resolution including a request to the Board of Supervisors to call an election on "the issue of levying a transportation excise tax, pursuant to A.R.S. 42-4106, needed to fund the plan." IOR 25, ¶¶ 3, 6; IOR 26, Ex. 2. Plaintiffs incorrectly, but no doubt intentionally and strategically, label the Resolution as the "Authorizing Resolution." P-AB at 1, n.2. The

Resolution, however, "authorized" nothing. Indeed, under the controlling statute, the Resolution could not "authorize" anything. *See* A.R.S. § 48-5314(A)(2).

What did the Resolution do? It did what A.R.S. § 48-5314(A)(2) enables it to do, it "certified to the county Board of Supervisors that the issue of levying a transportation excise tax pursuant to § 42-6106 be submitted to the qualified electors at a countywide special election or placed on the ballot at a countywide general election." Under the specific terms of the statute, this was a "request," not an authorization, demand, levy, or legislation. *See* A.R.S. § 48-5314(A)(2) ("The board shall . . . [r]equest by resolution . . . ."). The statute does not require the Resolution to include details about the proposed tax. This is unnecessary because the scope of a "transportation excise tax pursuant to § 42-6106" is described in the statute. *See* A.R.S. § 42-6106. The Resolution also discussed the proposed variable or modified rate, but that discussion does not erase the plain meaning of what constitutes a "transportation excise tax pursuant to § 42-6106." Under the specific terms of the statute, the Resolution did not, and could not, have any greater legal effect than "requesting" an election on the "issue of levying a transportation excise tax pursuant to § 42-6106." *See* A.R.S. § 48-5314(A)(2).

Plaintiffs' arguments that the Resolution had to include additional details because those details are necessary to define a valid tax fail for the same reasons their attacks on the Proposition 417 ballot language fail. Neither the Resolution nor

Proposition 417 are a tax statute or ordinance, and neither levies a tax. The details of the proposed tax, including the rate or rates, are to be included in the publicity pamphlet, which is the statutorily-mandated method for providing notice and information to voters. *See* A.R.S. § 48-5314(C). Notably, the statute only requires that the Resolution be sent to the Board of Supervisors; it does not require the Resolution to be posted, distributed, or publicized. *See* A.R.S. § 48-5314(A)(2).

The Resolution's limited statutory function demonstrates why the analysis in *Braden v. Yuma County Board of Supervisors*, 161 Ariz. 199 (App. 1989), the primary case upon which Plaintiffs rely, is inapplicable here. In *Braden*, the controlling statute specifically provided that the board of directors could authorize a project and assessment only after adopting a resolution of intention, fixing a date for a hearing, publishing a notice of the hearing, and entertaining objections to the authorization of the project. *Id*. at 204 (citing former A.R.S. §§ 45-2356.01 and -2364.03). The challenged resolution in *Braden* established and created a zone within a flood control district, but failed to specifically authorize the assessment. *Id.* The applicable statutes "specifically required as a prerequisite to 'acquiring authority to proceed with any project of special benefit to a zone' that 'the board of directors shall adopt a resolution specifying its intention to undertake such zone project.'" *Id*. at 203–04 (citing former A.R.S. § 45-2364.03). The court of appeals concluded that "the cumulative effect of omitting a specific resolution to undertake the project and

combining the proceedings establishing the zone with those authorizing the project and assessment was to jeopardize appellants' rights to notice and a hearing on the merits of the bridge and the corresponding assessment." *Id.* at 204.

The Resolution in the present case is different. The statute solely requires that it be adopted to "request" the setting of an election. *See* A.R.S. § 48-5314(A)(2). The Resolution did not have to specify details about the election, or be published. Nor did it deprive any voter of any right to notice and a hearing because the Legislature specifically provided for separate notice and an opportunity to be heard regarding approval of a transportation excise tax through an election and a detailed publicity pamphlet that must be sent to every household with a registered voter. *See* A.R.S. § 48-5314(A)(2), (C). In light of the different statutory schemes, and the detailed protections for voters included in A.R.S. § 48-5314, *Braden* has no application here, as the court of appeals correctly concluded. *See Vangilder v. Arizona Dep't of Revenue*, 248 Ariz. 254, 259, ¶ 11 (App. 2020), *as amended* (Mar. 3, 2020), *review granted* (Sept. 16, 2020).

Significantly, the Resolution was not "legislation." The trial court incorrectly based its decision on perceived deficiencies in the Resolution, noting that a "legislative body is without power to refer a measure that has not been enacted," relying on inapplicable Arizona Constitutional provisions governing initiative and referendums. IOR 41 at 2. These arguments miss the mark. The RTA was not

acting as a legislative body when it adopted the Resolution, and the Resolution was not legislation. As this Court has explained, "[t]o be considered legislation the measure must enact something." *Saggio v. Connelly*, 147 Ariz. 240, 241 (1985). The Resolution did not "enact" anything and, therefore, was not legislation. It was a temporary measure requesting that an election be held, as required by statute, not a permanent regulation of anything. *See* A.R.S. §§ 42-6106 and 48-5309.

Saggio is analogous to this case and is, therefore, instructive. There, advocates for disincorporation of the City of Apache Junction presented petitions calling for an election on that issue. 147 Ariz. at 240. This Court explained that the petitions were not legislation eligible for an initiative:

> The most that can be said for the proposed measure is that ***it is a petition demanding an election*** within the city at which the electorate would be asked to decide whether the city should be dissolved. The proposed measure is more in the nature of a demand for a public opinion poll by election. The form of the measure, however, ***is not legislation***. It does not enact anything.

Id. at 241 (emphasis added).

Similarly, the Resolution is not legislation. It is a request to the Board of Supervisors to conduct an election. *See* A.R.S. § 48-5312(A)(2). Once the voters approved the measure before them, the transportation excise tax was levied pursuant to the specific terms of the authorizing statute, A.R.S. § 42-6101—not pursuant to the authority of the Resolution.

It is undisputed that the RTA only has the authority given to it by statute. Unlike cities or counties, the RTA is not given general authority to enact laws or ordinances. *See* A.R.S. § 48-5301 *et seq.*; *cf., e.g.*, Ariz. Const. art XIII, § 2 (granting broad authority to charter cities); A.R.S. §§ 9-461 *et seq.* (municipal planning authority), 9-462 *et seq.* (municipal zoning authority), 9-463 *et seq.* (municipal subdivision regulations), 9-499.01 (powers of charter and general law cities), 11-813 (county zoning authority). Indeed, the RTA's only power to enact a tax is under the terms of A.R.S. § 42-6106(A), which provides for a levy of a transportation excise tax only **after** approval by the qualified electors in a countywide election. This is precisely what the RTA did here.

In addition, contrary to the trial court's analysis, special taxing districts such as the RTA are not subject to the constitutional provisions applicable to initiatives and referendums. *See Hancock v. McCarroll*, 188 Ariz. 492, 495–97 (App. 1996). Under the Arizona Constitution, initiative and referendum applies to cities, towns, and counties, but not to a special district:

> The powers of the Initiative and the Referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate.

Id. at 495, 497 (quoting Ariz. Const. art. IV, pt. 1, § 1(8)) (holding that "the Arizona Constitution reserves no right of initiative to the citizens of a stadium district"

because a stadium district is "a tax levying public improvement district and a political taxing subdivision of this state[,]" not a city, town or county). This makes sense when one considers the Constitution's reference to "empowered by general laws to legislate." Special districts, such as the RTA, are not given the general power to legislate.

Of course, not even all acts of cities, towns, and counties are considered legislative. That is because they "act in several capacities: legislative, executive, administrative, and quasi-judicial." *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488 (1991); *see also Maricopa Citizens Protecting Taxpayers v. Price*, 244 Ariz. 330, 334, ¶ 8 (App. 2017) (internal quotes and citations omitted) ("Although broadly construed, the right to referendum is limited to legislative acts."); *Respect the Promise in Opposition to R-14-02--Neighbors for a Better Glendale v. Hanna*, 238 Ariz. 296, 300, ¶ 13 (App. 2015) (quoting *Wennerstrom*, 169 Ariz. at 488) ("Voters may challenge only legislative actions via referendum because permitting 'referenda on executive and administrative actions would hamper the efficient administration of local governments.'"). The Resolution was not a legislative act.

To summarize, the Resolution simply cannot bear the weight Plaintiffs attempt to pile on it or the effect given to it by the trial court. It was not the centerpiece of the adoption of the transportation excise tax. By statute, the

centerpiece was the public vote, based on information provided to the voters in the ballot and publicity pamphlet. That vote should be given effect.

III. ANY ARGUMENT BASED ON DEFICIENCIES IN THE RESOLUTION HAD TO BE MADE BEFORE THE ELECTION.

The limited effect of the Resolution further highlights that any challenge to its legal effect or its application to voting on Proposition 417 had to be filed before the election. "Challenges concerning alleged procedural violations of the election process must be brought prior to the actual election." *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶ 9 (2002); *see also Zajac v. City of Casa Grande*, 209 Ariz. 357, 359–61, ¶¶ 13–17 (2004) (collecting cases). The alleged deficiencies in the Resolution are challenges to the procedures for placing the issue before the voters.

Plaintiffs waived any challenge to the results of the election based on the contents of the Resolution by not bringing it before the election. In *Zajac*, this Court rejected as untimely a challenge to the procedures leading up to the adoption of a zoning ordinance that the voters later approved. 209 Ariz. at 361, ¶ 19. On appeal from the trial court, the court of appeals held the statutory notice requirements associated with adopting the ordinance were subject to a strict compliance standard and struck down the ordinance. *Id.* at 359, ¶ 10. Without overturning the strict compliance ruling, this Court reversed, quoting its earlier decision in *Allen v. State*, 14 Ariz. 458 (1913):

> If objections had been made in the early stages of the process of submission for the reasons now assigned, the questions would have been subjects of judicial investigation and determination.... Timely appeal to the courts upon the questions now raised, if meritorious, would have settled the matter before the election was had. However, the measure was submitted to the voters without question. They were invited to believe that the formalities of the law pertaining to the submission of the measure had been fully met. The expense of the election was incurred, and the electors, imbued with the conviction that they were performing one of the highest functions of citizenship, and not going through a mere hollow form, we may assume, investigated the question and went to the polls and voted thereon.

Id. at 359–60 (quoting 14 Ariz. at 461–62). The opinion concluded: "Like the *Allen* court, we perceive justice in declining to upset the stated will of the voters of Casa Grande. For the foregoing reasons, we hold that Zajac, having failed to file a timely complaint, has waived his right of action." *Id.* at 361, ¶ 19.

The same reasoning applies with greater force here because nothing in the Resolution was intended to provide notice to anyone other than the Board of Supervisors. *See* A.R.S. § 48-5314(A)(2). The Legislature ensured voters would have notice and an opportunity to be heard by requiring an election be held before a transportation excise tax can be levied. *See* A.R.S. § 48-5314. If the Resolution was deficient, any challenge to its terms had to be made before that election.

For these reasons, Plaintiffs' reliance on the Resolution and any perceived faults in it must be rejected.

IV. THE VARIABLE OR MODIFIED RATE IS PERMITTED BY THE PLAIN LANGUAGE OF A.R.S. § 42-6106(C).

A.R.S. § 42-6106(C) specifically allows a transportation excise tax that includes a variable or modified rate:

> The department *shall* collect the tax at a *variable* rate if the variable rate is specified in the ballot proposition. The department *shall* collect the tax at a *modified* rate if approved by a majority of the qualified electors voting.

(Emphasis added).

The statute does not define these terms; therefore, their ordinary meanings are used. *See, e.g., City of Phoenix v. Orbitz Worldwide Inc*., 247 Ariz. 234, 239 ¶14 (2019) ("Because it does not appear from the context that the drafters intend a special meaning, we are guided by the word's ordinary meaning."), citing *Reading Law* 69 ("Words are to be understood in their ordinary everyday meaning – unless the context indicates that they bear a technical sense."). Petitioners baselessly urge the Court to apply a special or technical meaning to the statutory terms, but nothing in the context of the statutes themselves support their assertions.[2] Therefore, we must look to the plain and common meaning of the words. The common use of the word

[2] The Department of Revenue's interpretation in this litigation is not entitled to any deference. *See BSI Holdings, LLC v. Ariz. Dep't of Transp.*, 244 Ariz. 17, 21, ¶ 17 (2018) (citation omitted) ("Nor are we bound to follow ADOT's present interpretation of the statute. Whatever deference we might pay to such an interpretation, none is due here. The term is not a technical one requiring expertise to construe it. Nor has the agency's position in this litigation been reduced to written policy, much less a considered and established rule.").

"variable" means "able or apt to vary; subject to variation or changes." *Variable*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED (3d ed. 1993) ("WEBSTER'S DICTIONARY"); *see also Simpson v. Owens*, 207 Ariz. 261, 273, ¶ 35 (App. 2004) (courts may reference well-known and reputable dictionaries in construing statutes). The variable rate included in the Pinal County transportation excise tax is "able or apt to vary" based on the dollar value of a single item purchased and is certainly "subject to variation or changes" based on the dollar value. Until the Legislature specifically defines the term differently, the variable rate that Pinal County voters approved is permitted by the statute's plain language.

The common use of the word "modified" means to make "basic or fundamental changes in." *See Modify*, WEBSTER'S DICTIONARY. This is precisely what was done here. The rate on retail sales *changes* depending on whether the gross income from a retail sale exceeds $10,000, as approved by the voters. That change is what makes the rate modified, and variable.

Furthermore, imposing a tax at different rates, including a zero rate,[3] on different amounts or volumes of sales is not an option invented by Respondents. Not only does the rate flow naturally from the Legislature's express authorization of a county transportation excise tax that includes a variable or modified rate, but it is

[3] The Legislature has made it clear that a "rate" can be zero. In the commercial lease classification, although the defining provisions remain in the statutes, several years ago, the Legislature officially made the rate zero. *See* A.R.S. § 42-5010(A)(4).

also entirely consistent with the long-standing practice by cities and towns of imposing different tax rates, including zero, on large retail purchases. The Model City Tax Code, authorized by the Legislature, includes Local Option V, which reads:

> (d) Notwithstanding the provisions of subsection (a) above, when the gross income from the sale of a single item of tangible personal property exceeds dollars ($_____), the _____ percent (___%) tax rate shall apply to the first $_____. Above $_____, the measure of tax shall be at a rate of _____ percent (___%).**)**

MODEL CITY TAX CODE § _460(d) (Local Option #V), https://modelcitytaxcode.az.gov/articles/4-460.htm (2018).[4] Twenty cities and towns have adopted Local Option V. *See* MODEL CITY TAX CODE, https://modelcitytaxcode.az.gov/Option_Charts/local.htm (2018).

Contrary to Petitioners' assertion, the inclusion of a similar provision in the Pinal County transportation excise tax is neither novel nor radical. Consequently, any concerns about the tax reporting system collapsing must be rejected. Regardless, this Court will apply the statutes as written even when the Department of Revenue argues a particular interpretation will create an "administrative nightmare." *See*

[4] Indeed, the Department of Revenue has created a city-specific code (761) for when part of a single item is taxed at 0%. *See* Arizona Department of Revenue, *Deduction Codes*, https://azdor.gov/transaction-privilege-tax/deduction-codes (follow "Listing of All Deduction Codes (Download PDF)) (last visited October 7, 2020), p. 15.

Ariz. Dep't of Revenue v. Ormond Builders, Inc., 216 Ariz. 379, 389, ¶¶ 44–45 (App. 2007).

CONCLUSION

For the foregoing reasons, the Court should affirm the opinion of the court of appeals.

RESPECTFULLY SUBMITTED this 7th day of October, 2020.

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SUPREME COURT

STATE OF ARIZONA

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CERTIFICATE OF COMPLIANCE TO PINAL COUNTY AND PINAL REGIONAL TRANSPORTATION AUTHORITY'S SUPPLEMENTAL BRIEF

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This certificate of compliance concerns a brief and is submitted under Rule 14(a)(5), Arizona Rules of Civil Appellate Procedure. The undersigned certifies that the Pinal County and Pinal Regional Transportation Authority's Supplemental Brief, to which this certificate is attached, uses type of 14 points and is double-spaced using a Times New Roman font. Pursuant to the Supreme Court's Order dated September 17, 2020 and Rule 4(b)(9), Arizona Rules of Civil Appellate Procedure, this Brief does not exceed 20 pages, excluding the cover page, caption, table of contents, table of citations, the date and signature block, or and any appendix.

DATED this 7th day of October , 2020.

FENNEMORE CRAIG, P.C.

By /s/ *Patrick Irvine*
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SUPREME COURT

STATE OF ARIZONA

HAROLD VANGILDER, et al. Plaintiffs/Appellees/Cross-Appellants, v. ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellee. PINAL COUNTY and PINAL REGIONAL TRANSPORTATION AUTHORITY, Defendants/Appellants/Cross-Appellees.	Supreme Court No. CV-20-0040-PR Court of Appeals Division One No. 1 CA-TX 19-0001 Arizona Tax Court No. TX2017-000663

CERTIFICATE OF SERVICE TO PINAL COUNTY'S AND PINAL REGIONAL TRANSPORTATION AUTHORITY'S SUPPLEMENTAL BRIEF

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The undersigned hereby certifies that on October 7, 2020, the Pinal County and Pinal Regional Transportation Authority's Supplemental Brief was electronically filed with the Clerk of the Arizona Court of Appeals, Division One, using AZTurbo Court.

The undersigned further certifies that on October 7, 2020, pursuant to Rule 4(f), Arizona Rules of Civil Appellate Procedure, and Rule 5(c)(2)(E), Arizona Rules of Civil Procedure, the Pinal County and Pinal Regional Transportation Authority's Supplemental Brief was electronically served via AZTurbo Court, an electronic filing service provider approved by the Administrative Office of the Courts, on:

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