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**Scharf-Norton Center for Constitutional Litigation at the  
GOLDWATER INSTITUTE**

Clint Bolick (021684)  
Kurt Altman (015603)  
Christina Sandefur (027983)  
500 E. Coronado Rd., Phoenix, AZ 85004  
(602) 462-5000  
[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)  
*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

ANDY BIGGS, ANDY TOBIN, NANCY  
BARTO, JUDY BURGES, CHESTER  
CRANDELL, GAIL GRIFFIN, AL  
MELVIN, KELLI WARD, STEVE  
YARBROUGH, KIMBERLY YEE, JOHN  
ALLEN, BRENDA BARTON, SONNY  
BORRELLI, PAUL BOYER, KAREN  
FANN, EDDIE FARNSWORTH, THOMAS  
FORESE, DAVID GOWAN, RICK GRAY,  
JOHN KAVANAGH, ADAM KWASMAN,  
DEBBIE LESKO, DAVID LIVINGSTON,  
PHIL LOVAS, JD MESNARD, DARIN  
MITCHELL, STEVE MONTENEGRO,  
JUSTIN OLSON, WARREN PETERSEN,  
JUSTIN PIERCE, CARL SEEL, STEVE  
SMITH, DAVID STEVENS, BOB  
THORPE, KELLY TOWNSEND,  
MICHELLE UGENTI, JEANETTE  
DUBREIL, KATIE MILLER, and TOM  
JENNEY,

Plaintiffs,

CV2013-011699

Case No.: \_\_\_\_\_

**COMPLAINT**

**(for Injunctive and Declaratory Relief)**

vs.

JANICE K. BREWER, in her official capacity as Governor of Arizona; and  
THOMAS J. BETLACH, in his official capacity as Director of the Arizona Health Care Cost Containment System

Defendants.

### **Introduction**

1. To shield themselves from one of the most widely abused government powers, Arizonans in 1992 overwhelmingly enacted a constitutional requirement that two-thirds of the legislature must approve any tax increase. Ariz. Const. art. IX, § 22 (“Prop 108”). Proponents of expanding Arizona’s Medicaid program were unable to garner that level of legislative support to impose a new “provider tax” on hospitals, which would fund Arizona’s share of the massive new program.

2. Instead of complying with the Constitution, expansion advocates passed the new program by ceding the power to levy taxes to the Director of Arizona’s Medicaid agency. House Bill 2010 § 5 (2013) (1st Special Session) (“H.B. 2010”), codified at A.R.S. § 36-2901.08. Under the new law, this appointed administrator has full discretion to set the amount of the tax and to decide who has to pay and who will be exempt. §§ 36-2901.08(A)-(C).

3. To protect the people from an unaccountable bureaucracy, Arizona’s Constitution divides

government power into three “separate and distinct” branches and reserves the lawmaking power to elected legislators, whose decisions are subject to review by the other branches. Ariz. Const. art. III; Ariz. Const. art. IV, Pt. 1, § 1. Ignoring restrictions on the taxing power and yielding control to independent officials eviscerates these checks and balances, inviting uncertainty and paving the way for special interest groups to hijack the lawmaking process. Plaintiffs seek to enjoin collection of the provider tax and a declaration that it violates the Arizona Constitution’s Prop 108 and separation-of-powers clauses.

**Parties, Jurisdiction, and Venue**

4. Plaintiff Andy Biggs is a citizen of the United States, a resident of the State of Arizona, and the current Arizona State Senate President, representing Legislative District 12. Plaintiff Biggs voted against H.B. 2010.

5. Plaintiff Andy Tobin is a citizen of the United States, a resident of the State of Arizona, and the current Speaker of the Arizona State House of Representatives, representing Legislative District 1. Plaintiff Tobin voted against H.B. 2010.

6. Plaintiff Nancy Barto is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 15. Plaintiff Barto voted against H.B. 2010.

7. Plaintiff Judy Burges is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 22. Plaintiff

Burges voted against H.B. 2010.

8. Plaintiff Chester Crandell is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 6. Plaintiff Crandell voted against H.B. 2010.

9. Plaintiff Gail Griffin is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 14. Plaintiff Griffin voted against H.B. 2010.

10. Plaintiff Al Melvin is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 11. Plaintiff Melvin voted against H.B. 2010.

11. Plaintiff Kelli Ward is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 5. Plaintiff Ward voted against H.B. 2010.

12. Plaintiff Steve Yarbrough is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 17. Plaintiff Yarbrough voted against H.B. 2010.

13. Plaintiff Kimberly Yee is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State Senate, representing Legislative District 20. Plaintiff Yee voted against H.B. 2010.

14. Plaintiff John Allen is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 15. Plaintiff Allen voted against H.B. 2010.

15. Plaintiff Brenda Barton is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 6. Plaintiff Barton voted against H.B. 2010.

16. Plaintiff Sonny Borrelli is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 5. Plaintiff Borrelli voted against H.B. 2010.

17. Plaintiff Paul Boyer is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 20. Plaintiff Boyer voted against H.B. 2010.

18. Plaintiff Karen Fann is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 1. Plaintiff Fann voted against H.B. 2010.

19. Plaintiff Eddie Farnsworth is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 12. Plaintiff Farnsworth voted against H.B. 2010.

20. Plaintiff Thomas Forese is a citizen of the United States, a resident of the State of

Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 17. Plaintiff Forese voted against H.B. 2010.

21. Plaintiff David Gowan is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 14. Plaintiff Gowan voted against H.B. 2010.

22. Plaintiff Rick Gray is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 21. Plaintiff Gray voted against H.B. 2010.

23. Plaintiff John Kavanagh is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 23. Plaintiff Kavanagh voted against H.B. 2010.

24. Plaintiff Adam Kwasman is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 11. Plaintiff Kwasman voted against H.B. 2010.

25. Plaintiff Debbie Lesko is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 21. Plaintiff Lesko voted against H.B. 2010.

26. Plaintiff David Livingston is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing

Legislative District 22. Plaintiff Livingston voted against H.B. 2010.

27. Plaintiff Phil Lovas is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 22. Plaintiff Lovas voted against H.B. 2010.

28. Plaintiff JD Mesnard is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 17. Plaintiff Mesnard voted against H.B. 2010.

29. Plaintiff Darin Mitchell is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 13. Plaintiff Mitchell voted against H.B. 2010.

30. Plaintiff Steve Montenegro is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 13. Plaintiff Montenegro voted against H.B. 2010.

31. Plaintiff Justin Olson is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 25. Plaintiff Olson voted against H.B. 2010.

32. Plaintiff Warren Petersen is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 12. Plaintiff Petersen voted against H.B. 2010.

33. Plaintiff Justin Pierce is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 25. Plaintiff Pierce voted against H.B. 2010.

34. Plaintiff Carl Seel is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 20. Plaintiff Seel voted against H.B. 2010.

35. Plaintiff Steve Smith is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 11. Plaintiff Smith voted against H.B. 2010.

36. Plaintiff David Stevens is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 14. Plaintiff Stevens voted against H.B. 2010.

37. Plaintiff Bob Thorpe is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 6. Plaintiff Thorpe voted against H.B. 2010.

38. Plaintiff Kelly Townsend is a citizen of the United States, a resident of the State of Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 16. Plaintiff Townsend voted against H.B. 2010.

39. Plaintiff Michelle Ugenti is a citizen of the United States, a resident of the State of



Arizona, and a current member of the Arizona State House of Representatives, representing Legislative District 23. Plaintiff Ugenti voted against H.B. 2010.

40. Plaintiff Jeanette Dubreil is a citizen of the United States, a resident of the State of Arizona, and lives within Legislative District 22. Plaintiff Dubreil opposes H.B. 2010, and her senator and representatives voted against it.

41. Plaintiff Katie Miller is a citizen of the United States, a resident of the State of Arizona, and lives within Legislative District 14. Plaintiff Miller opposes H.B. 2010, and her senator and representatives voted against it.

42. Plaintiff Tom Jenney is a citizen of the United States and a resident and property taxpayer of Maricopa County in the State of Arizona. He is a grassroots taxpayer activist and Director of the Arizona Chapter of Americans for Prosperity. Plaintiff Jenney opposes H.B. 2010 and brings this action pursuant to A.R.S. §§ 35-212 and 213.

43. Defendant Janice K. Brewer is the Governor of Arizona. She oversees the Director of the Arizona Health Care Cost Containment System (“AHCCCS”), Arizona’s Medicaid agency, which administers contracted health plans for individuals who qualify for Medicaid and other medical assistance programs. She is sued in her official capacity only.

44. Defendant Thomas J. Betlach is the Director of AHCCCS and reports directly to the Governor. Under H.B. 2010, Defendant Betlach is responsible for establishing, administering, and collecting a provider tax to fund Arizona’s Medicaid expansion, including determining the

amount or rate of the tax and establishing modifications or exemptions to the tax. H.B. 2010 § 5, codified at §§ 36-2901.08(A)-(C). He is sued in his official capacity only.

45. Jurisdiction over this action, claims, and parties is provided by A.R.S. §§ 12-123, 12-1801, and 12-1831.

46. Venue is proper pursuant to A.R.S. § 12-401.

### **Facts Common to All Claims**

#### **Medicaid expansion**

47. Medicaid is a means-tested government health insurance program that is jointly funded and managed by the state and federal governments. State participation is voluntary. The program was established in 1965, Pub. L. 89-97, 79 Stat. 286 (1965), but Arizona did not join until 1982. Ariz. Sess. Laws Ch. 1 (1981) (4th Special Session).

48. In 2010, the Patient Protection and Affordable Care Act (“PPACA”) increased federal eligibility for the program from “medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children,” to “the entire nonelderly population with income below 133 percent of the [federal] poverty level.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2655, 2606-607 (2012). The Supreme Court ruled that the federal government could not compel states to expand their Medicaid programs by threatening to discontinue federal funding for the entire program, but could only entice states to expand their programs by offering additional federal funding for the new populations. *Id.*

49. For the first three years of the new program (through 2016), the federal government will cover the medical costs for newly eligible enrollees in states that choose to expand. Pub. L. 111-148 § 2001(a)(3)(B)(1)(A). Even during those first three years, states that choose to expand are responsible for administrative costs and medical costs for previously eligible populations.

50. The Governor's Office estimates that the cost of expansion to the state of Arizona will be \$154 million for the first year alone. Office of Governor Janice K. Brewer, *The Executive Budget Recommendation, FY 2014 and FY 2015: Medicaid Expansion* (January 2013) at p. 5, available at [http://azgovernor.gov/dms/upload/PR\\_011413\\_MedicaidBudgetRec.pdf](http://azgovernor.gov/dms/upload/PR_011413_MedicaidBudgetRec.pdf).

51. The Kaiser Family Foundation estimates that expansion will cost Arizona over \$3.1 billion during the period of 2014-2022, assuming the federal government continues to pay its share of the medical costs for newly eligible enrollees. John Holahan, et al., *The Cost and Coverage Implications of the ACA Medicaid Expansion: National and State-by-State Analysis*, Kaiser Commission on Medicaid and the Uninsured at p. 8 (November 2012), available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8384.pdf>. Arizona's share will swell as federal funding declines.

52. Arizona will fund the state's share of the expansion by charging hospitals a mandatory provider tax. A.R.S. § 36-2901.08 (2013).

53. In order to qualify for funding, federal law requires Arizona to collect the tax from hospitals without regard to whether they accept Medicaid payments. See 42 U.S.C. § 1396b(w);

42 C.F.R. 433.68 (taxes must be broad-based and uniformly imposed, cannot hold providers harmless, and must be “generally redistributive”).

### **Supermajority requirement not met**

54. Given the risks and expenses associated, many legislators were skeptical of approving expansion.

55. In 1992, Arizona voters approved by a majority of over 71 percent a constitutional amendment to “make it more difficult to raise taxes” even when legislators are “respond[ing] to emergency situations, court directives and federal requirements.” State of Arizona Official Canvass, General Election, November 3, 1992, *available at* <http://www.azsos.gov/election/1992/General/Canvass1992GE.pdf>; Arizona General Election Publicity Pamphlet (Nov. 3, 1992) at p. 46, *available at* <http://azsos.gov/election/1992/Info/PubPamphlet/PubPam92.pdf>.

56. That provision, Article IX, Section 22 of the Arizona Constitution (“Prop 108”), requires two-thirds of both houses of the state legislature to approve “[a]n act that provides for a net increase in state revenues,” including any new tax, fee, or assessment or to increase an existing tax, fee, or assessment. Ariz. Const. art. IX §§ 22(A), (B).

57. During the last legislative session, Governor Brewer threatened a moratorium on all legislation until Medicaid expansion passed both houses and made good on this threat by vetoing five unrelated bills. Mary Jo Pitzl, *Threats, vetoes fly as tensions rise over Medicaid expansion*,

Arizona Republic (May 24, 2013), *available at*

[http://www.azcentral.com/news/politics/articles/20130523brewer-vetoes-senate-bills-medicaid-moratorium.html?nclick\\_check=1](http://www.azcentral.com/news/politics/articles/20130523brewer-vetoes-senate-bills-medicaid-moratorium.html?nclick_check=1).

58. On the evening of June 12, Governor Brewer called the legislature into special session to vote on Medicaid expansion. Ben Giles, *Lawmakers Prepare to Adjourn as Medicaid Expansion Moves Toward Approval*, Arizona Capitol Times (June 11, 2012), *available at*

<http://azcapitoltimes.com/news/2013/06/11/az-gov-jan-brewer-calls-special-session-on-budget-medicaid/>.

59. The final Senate vote on the provider tax was 18 in favor, and the final House vote was 33 in favor. Neither house approved the provider tax with a two-thirds supermajority. *See* Bill Status Overview: HB 2010, *available at*

[http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/51leg/1s/bills/hb2010o.asp&Session\\_ID=111](http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/51leg/1s/bills/hb2010o.asp&Session_ID=111).

60. Twenty-seven members of the House and eleven senators voted against H.B. 2010, enough to prevent the provider tax from becoming law under Prop 108's supermajority requirement. *See id.*

61. Despite its constitutional infirmities, Governor Brewer signed H.B. 2010 into law on June 17, 2013. *Id.*

### **Delegation of authority to AHCCCS Administrator**

62. H.B. 2010 delegates the authority to levy the provider tax to the unelected AHCCCS Director, requiring the Director to “establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs.” A.R.S. § 36-2901.08(A).

63. H.B. 2010 empowers the Director to set the “method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment.” § 36-2901.08(B).

64. Although § 36-2901.08(C) lists several factors that the Director *may* consider when determining exemptions (size of hospital, specialty services available to patients, and geographic location of hospital), the Director is not required to consider these – or *any* – factors.

### **Private attorney general action**

65. H.B. 2010 establishes a “hospital assessment fund . . . consisting of monies collected pursuant to [the provider tax].” A.R.S. § 36-2901.09(A). The Director uses the money collected from the provider tax to fund the state’s share of the Medicaid expansion program. *See* A.R.S. § 36-2901.08(A).

66. On September 11, 2013, Plaintiff Jenney caused to be hand delivered a request to Attorney General Tom Horne pursuant to A.R.S. §§ 35-212 and 213, stating his desire to institute an action in his own name and with the same effect as if brought by the attorney

general, to enjoin the illegal payment of public monies that will result from the unconstitutional provider tax.

### **Count I – Supermajority Requirement**

67. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 66, as though fully set forth herein.

68. Article IX, Section 22(A) of the Arizona Constitution provides in part, “An act that provides for a net increase in state revenues, as described in subsection B is effective on the affirmative vote of two-thirds of the members of each house of the legislature.” Subsection B of that provision provides:

The requirements of this section apply to any act that provides for a net increase in state revenues in the form of:

1. The imposition of any new tax.
2. An increase in a tax rate or rates.
3. A reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability.
4. An increase in a statutorily prescribed state fee or assessment or an increase in a statutorily prescribed maximum limit for an administratively set fee.
5. The imposition of any new state fee or assessment or the authorization of any new administratively set fee.
6. The elimination of an exemption from a statutorily prescribed state fee or assessment.
7. A change in the allocation among the state, counties or cities of Arizona transaction privilege, severance, jet fuel and use, rental occupancy, or other taxes.
8. Any combination of the elements described in paragraphs 1 through 7.

69. The “intent of [this provision] was to prevent the legislature from enacting without a

super-majority vote any statute that increases the overall burden on the tax and fee paying public.” *Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358, 364, 238 P.3d 626, 632 (App. 2010) (citations and quotations omitted).

70. The provider tax enlarges state revenues and increases tax burdens on Arizonans.

71. The provider tax is not a fee paid or assessment charged in exchange for a privilege or benefit. It is by definition a broad-based, mandatory tax levied on hospitals regardless of whether they receive Medicaid payments. A.R.S. § 36-2901.08(B); 42 U.S.C. § 1396b(w); 42 C.F.R. § 433.68.

72. The legislature did not authorize by a supermajority vote the AHCCCS Director’s authority to set the provider tax.

73. In order to qualify for funding, federal law places limits on Arizona’s ability to set the provider tax. For example, Arizona must collect the tax from hospitals without regard to whether they accept Medicaid payments. *See* 42 U.S.C. § 1396b(w); 42 C.F.R. 433.68 (taxes must be broad-based and uniformly imposed, cannot hold providers harmless, and must be “generally redistributive”).

74. The provider tax does not fit within Prop 108’s narrow exceptions that only require a normal majority vote because: (1) it was caused by an affirmative act of the legislature; (2) it is not a fee or assessment, was not properly authorized, and is prescribed by limits; and (3) it is not imposed by a political subdivision of the state. *See* Ariz. Const. art. IX § 22(C).



75. The provider tax that funds Arizona's share of the Medicaid expansion did not pass either house with a two-thirds approval and thus fell short of the constitutionally required minimum necessary to approve a new tax.

76. Because enough legislators voted against H.B. 2010 to prevent it from becoming law under the constitutional supermajority requirement, signing H.B. 2010 into law effectively nullified the vote of each legislator who voted against H.B. 2010.

77. Because enough legislators voted against H.B. 2010 to prevent it from becoming law under the constitutionally required supermajority requirement, signing H.B. 2010 into law effectively denied representation to the constituents of those legislators who voted against H.B. 2010.

78. Because H.B. 2010 was not properly approved according to Article IX, Section 22(A) of the Arizona Constitution, monies collected pursuant to or spent from that assessment are illegal.

79. Accordingly, and for all of the foregoing reasons, A.R.S. § 36-2901.08 violates the Arizona Constitution's supermajority requirement. Ariz. Const. art. IX § 22.

### **Count II – Separation of Powers**

80. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 79, as though fully set forth herein.

81. Article III of the Arizona Constitution provides, "The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive,

and the Judicial; and, except as provided in this Constitution, *such departments shall be separate and distinct*, And no one of such departments shall exercise the powers properly belonging to either of the others.” (emphasis added).

82. Article IV, Part 1, Section 1 of the Arizona Constitution provides, “The legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives.”

83. The legislature cannot delegate to another branch of government an essentially legislative power, such as the power to tax. *See S. Pacific Co. v. Cochise Cnty.*, 92 Ariz. 395, 404, 377 P.2d 770, 777 (1963). *See also* Ariz. Const. art. IX, § 1 (“The power of taxation shall never be surrendered, suspended or contracted away”).

84. Even when a power may be delegated, it must be circumscribed by terms “sufficiently definite” to guide the exercise of that power. *State Comp. Fund v. De La Fuente*, 18 Ariz. App. 246, 250-51, 501 P.2d 422, 426-27 (1972).

85. H.B. 2010 empowers the AHCCCS Director to exercise his discretion to “establish, administer and collect” the provider tax and to set the “method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment.” A.R.S. §§ 36-2901.08(A)-(B).

86. The powers to “establish, administer and collect” a tax and to determine the amount of the tax and who will be exempt are essentially legislative powers.

87. Although § 36-2901.08(C) lists several factors that the AHCCCS Director *may* consider when determining exemptions (size of hospital, specialty services available to patients, and geographic location of hospital), the Director is not required to consider these – or *any* – factors.

88. Although the AHCCCS Director must present the methodology for implementing and modifying the assessment to the Joint Legislative Budget Committee (“JLBC”), the JLBC is not required to approve the Director’s modifications or exemptions. § 36-2901.08(D).

89. H.B. 2010 impermissibly delegates the taxing power to the AHCCCS Director, empowering him to set the amount of the tax and to determine who will be exempt. A.R.S. § 36-2901.08(A)-(C).

90. Because H.B. 2010 impermissibly delegates the taxing power to the AHCCCS Director, monies collected pursuant to or spent from that assessment are illegal.

91. Accordingly, and for all of the foregoing reasons, A.R.S. § 36-2901.08 violates the Arizona Constitution’s separation-of-powers clauses. Ariz. Const. art. III; Ariz. Const. art. IV, Pt. 1, § 1.

### **REQUEST FOR RELIEF**

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

- A. Declare that A.R.S. § 36-2901.08 violates Article IX, Section 22 of the Arizona Constitution;

- B. Declare that A.R.S. § 36-2901.08 violates Article III; Article IV, Part 1, Section 1; and the separation-of-powers doctrine of the Arizona Constitution;
- C. Permanently enjoin Defendants and their agents and employees from establishing, administering, or collecting the provider tax, or from otherwise enforcing A.R.S. § 36-2901.08;
- D. Award costs and attorney's fees to Plaintiffs pursuant to A.R.S. §§ 12-341, 12-348, 35-213, and the private attorney general doctrine;
- E. Order such additional relief as may be just and proper.

**DATED: September 12, 2013**

Respectfully submitted,

/s/ Christina Sandefur  
Clint Bolick (021684)  
Kurt Altman (015603)  
Christina Sandefur (027983)



**Scharf-Norton Center for Constitutional Litigation  
at the GOLDWATER INSTITUTE**

500 E. Coronado Rd., Phoenix, AZ 85004  
(602) 462-5000

[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)

*Attorneys for Plaintiffs*