SUPREME COURT OF ARIZONA

KAREN FANN, an individual, et al., Plaintiffs/Appellants, v. STATE OF ARIZONA, et al., Defendants/Appellees.	Arizona Supreme Court No. CV 21-0058-T/AP Court of Appeals, Division One No. 1 CA-CV-21-0087 Maricopa County Superior Court No. CV2020-015495 No. CV2020-015509 (Consolidated)

BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS/APPELLANTS

FILED PURSUANT TO ARCAP 16(b)(1)(B) AND WITH WRITTEN CONSENT OF THE PARTIES

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INTEREST OF AMICUS

The Arizona Commerce Authority (the "ACA") is the state's leading economic development organization tasked with growing and strengthening Arizona's economy. Among its primary duties are the recruitment of out-of-state companies to locate and expand their operations in Arizona and working with existing companies to maintain and grow their Arizona operations. As a result, the ACA is vitally interested in laws and policies that promote or hinder economic development. Proposition 208, by significantly increasing taxes, demonstrably hinders the state's economic growth and does so in violation of Article IX, Section 21 of the Arizona Constitution.

INTRODUCTION

In an attempt to avoid the spending limits of Article IX, Section 21 of the Arizona Constitution, Proposition 208 summarily declares that it is exempt from those limits. No party defends this statutory attempt to override constitutionally imposed spending limits. Intervenor-Defendants argue, however, that distributions made pursuant to Proposition 208 constitute a "grant" under the exemption in Article IX, Section 21(4)(c)(v). A distribution under Proposition 208 is not a "grant" for purposes of Article IX, Section 21 as Plaintiffs accurately explain in their Opening Brief. *See* Plaintiff's Opening Brief (February 26, 2021) at 9–17. The ACA writes separately because the grant exemption in Article IX, Section 21 extends only to *private* grants, gifts, aid, or contributions—not "grants" from the state.

Even if "grants" from the state could be exempt, the funds the school districts received under Proposition 208 plainly are not "grants" as that term is commonly understood and used. Bestowing a grant implies a discretionary gift that is typically the result of an application process. Proposition 208's distributions, in contrast, are mandatory.

Holding that Proposition 208's distributions are not "grants" furthers the clear purpose of the voters in adopting Article IX, Section 21, which was to limit spending by school districts so as to reduce the likelihood of continuous tax increases that had preceded the adoption of the spending limit. The voters were concerned about this

continual series of tax increases, in part, as they impair Arizona's ability to attract and retain business that is vital to the economic well-being of the state. Proposition 208 does just the opposite of what the voters intended in Article IX, Section 21.

Although the ACA continues to strongly support education in Arizona, Proposition 208, which was adopted as a statute—not a constitutional amendment—violates Article IX, Section 21. For that reason, the trial court erred in failing to grant Plaintiffs a preliminary injunction to enjoin the implementation of Proposition 208.

ARGUMENT

Proposition 208, passed by voters in 2020, is the largest permanent income tax increase in Arizona history. The express purpose of the surcharge is "to advance public education in this state." A.R.S. § 43-1013(A). The Arizona Department of Revenue must "separately account for revenues collected pursuant to the income tax surcharge" imposed by Proposition 208 and must deposit those revenues into a newly created "student support and safety fund." *Id.* § 43-1013(B); *see also id.* § 15-1281.

Proposition 208 details how funds deposited into the student support and safety fund are to be spent.[1] After subtracting for the costs of administering the fund

[1] The student support and safety fund consists of revenue raised through Proposition 208's income tax surcharge, private donations, and interest on those monies. *Id.* § 15-1281(A).

itself, the remaining funds must be spent as follows:

> (a) 50 percent to school districts and charter schools for the purpose of hiring teachers and classroom support personnel and increasing their base compensation,
>
> (b) 25 percent to school districts and charter schools for the purpose of hiring student support services personnel and increasing their base compensation,
>
> (c) 10 percent to school districts and charter schools for the purpose of providing mentoring and retention programming for new classroom teachers,
>
> (d) 12 percent to the "career training and workforce fund established by § 15-1282," and
>
> (e) 3 percent to the "Arizona teachers academy fund established by § 15-1655."

Id. § 15-1281(D). Monies in the student support and safety fund may not be transferred to any other fund aside from those outlined, do not revert to the state general fund, and do not lapse under A.R.S. § 35-190. *Id.* § 15-1281(A).

Proposition 208 deliberately refers to distributions from the student support and safety fund as "grants." *Id.* § 15-1281(D). For example, Proposition 208 states that "the state treasurer shall transfer all monies in the student support and safety fund . . . as follows: (1) Fifty percent as ***grants*** to school districts and charter schools . . . ." Proposition 208 characterized the distributions as "grants" in an attempt to circumvent Article IX, Section 21 of the Arizona Constitution.

Article IX, Section 21 imposes spending limitations on Arizona school districts and community colleges. Aggregate expenditure limitations for all school

districts are determined each year pursuant to a formula, and the "aggregate expenditures of local revenues for all school districts ***shall not exceed***" that limitation. Ariz. Const., art. IX, § 21(2) (emphasis added).

The spending limitations in Article IX, Section 21 apply to all "local revenues," a term broadly defined to include "all monies, revenues, funds, property and receipts of any kind whatsoever received by or for the account of a school district or community college district or any of its agencies, departments, offices, boards, commissions, authorities, councils and institutions." Ariz. Const., art. IX, § 21(4)(c). No party disputes that this definition is broad enough to encompass revenues raised pursuant to Proposition 208. The dispute focuses instead on one of the *exceptions* to the definition of local revenues—i.e., the "grant" exception, which reads:

> Any amounts or property received as grants, gifts, aid or contributions of any type except amounts received directly or indirectly in lieu of taxes received directly or indirectly from any private agency or organization, or any individual.

Id. § 21(4)(c)(v). According to Defendant-Intervenors, Proposition 208's distributions are simply "grants" and are therefore excepted from the definition of "local revenues," which in turn excepts the distributions from being subject to the aggregate expenditure limit. This interpretation is flawed.

I. PROPOSITION 208'S DISTRIBUTIONS ARE NOT "GRANTS"; THEY ARE SUBJECT TO THE AGGREGATE EXPENDITURE LIMIT IN ARTICLE IX, SECTION 21.

The "grant" exception does not apply to tax revenues collected and distributed pursuant to Proposition 208 for at least two reasons. First, the grant exception applies only to grants received from *private* entities or individuals. Second, even assuming the grant exception extended to state grants, taxes levied for the benefit of school districts and paid to those districts under Proposition 208 are plainly not "grants."

A. The Grant Exemption Excepts Only *Private* Grants From the Definition of Local Revenues.

The text of the grant exemption illustrates that only private grants, gifts, aid, or contributions are exempt from the definition of local revenues. To illustrate, the grant exception states:

> Any amounts or property received as grants, gifts, aid or contributions of any type except amounts received directly or indirectly in lieu of taxes ***received directly or indirectly from any private agency or organization, or any individual***.

Ariz. Const., art. IX, § 21(4)(c)(v) (emphasis added). The phrase "received directly or indirectly from any private agency or organization, or any individual" modifies "[a]ny amounts or property received as grants, gifts, aid or contributions of any type." As a result, only ***private*** grants, gifts, aid, or contributions are exempt from aggregate expenditure limitations, unless the grant, gift, aid, or contribution was given in lieu of taxes. Indeed, during the drafting of Proposition 208, the Arizona

Legislative Council interpreted Article IX, Section 21(4)(c)(v) this way.[2] *See* Plaintiffs' APPV1-063. The trial court agreed that the Legislative Council's construction was reasonable.[3] *See* Plaintiffs' APPV2-111.

To construe Article IX, Section 21(4)(c)(v) to encompass non-private grants, one would have to read the phrase "received directly or indirectly from any private agency or organization, or any individual" to modify only the phrase, "amounts received directly or indirectly in lieu of taxes." This construction, however, would make Article IX, Section 21(4)(c)(v) redundant and incoherent. To illustrate, the grant exception would be read as follows:

> Any amounts or property received as grants, gifts, aid or contributions of any type ***except amounts received directly or indirectly in lieu of taxes received directly or indirectly from any private agency or organization, or any individual***.

This reading results in redundant use of the phrase "received directly or indirectly." The second use of the phrase "received directly or indirectly" makes sense only if it limits the class of "grants, gifts, aid, or contributions" subject to the exemption from "local revenues." If it modifies "amounts received directly or indirectly in lieu of

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[2] The Legislative Council advised that Proposition 208's attempt "to exempt the additional support for education prescribed by the initiative" from the aggregate expenditure limitation in Article IX, Section 21 was "likely invalid." Plaintiffs' APPV1-063.

[3] The trial court ultimately did not issue an opinion adopting any construction of Article IX, Section 21(4)(c)(v), preferring to await further case development. *See* Plaintiffs' APPV2-111.

taxes," it adds redundancy and ambiguity. Such an interpretation is to be avoided by the Court. *See Fields v. Elected Officials' Ret. Plan*, 234 Ariz. 214, 218, ¶ 16 (2014).

The trial court suggested that construing Article IX, Section 21 as limited to private grants would require additional commas in the text. *See* Plaintiffs' APPV2-111. Although additional commas are not necessary, it is useful to envision a comma before the word "except" and another after the words "in lieu of taxes." With the interpretive commas, the exclusion would read as follows:

> Any amounts or property received as grants, gifts, aid or contributions of any type**,** except amounts received directly or indirectly in lieu of taxes**,** received directly or indirectly from any private agency or organization, or any individual.

However, the lack of commas is not dispositive because even without the commas, the only logical reading of the grant exemption is that it applies exclusively to private grants, gifts, aid, or contributions.

The absence of commas is not surprising. The 1980 Arizona Legislative Bill Drafting Manual, which was the edition in place when the constitutional language was proposed, advised legislators to "[u]se commas sparingly." *See* ACA-APP5, The Arizona Legislative Bill Drafting Manual (January 1980) at 45, available at https://azmemory.azlibrary.gov/digital/collection/statepubs/id/38016. Indeed, another constitutional amendment passed at the same time as Article IX, Section 21 includes a similar "except" clause that is not set off from the remainder of

constitutional text by commas, but that plainly constitutes a standalone clause. *See* Ariz. Const., art. IX, § 18(3)(a) ("[T]he value of real property and improvements and the value of mobile homes used for all ad valorem taxes *except those specified in subsection (2)* shall be the lesser of the full cash value of the property or . . . ." (emphasis added)).

Context also demonstrates that the exemption applies only to private grants. The subsection immediately preceding the grant exemption excludes federal grants from the definition of local revenues. Ariz. Const., art. IX, § 21(4)(c)(iv). Construing Section 21(4)(c)(v) to encompass grants, gifts, aid, or contributions *from any source* would render the text of Section 21(4)(c)(iv) superfluous because federal grants would already be exempt under Section 21(4)(c)(v). *Ariz. E. R. Co. v. State*, 19 Ariz. 409, 411 (1918) ("If it can be prevented, no clause, sentence, or word in the Constitution shall be superfluous, void, or insignificant; it being the duty of this court as an expositor to make a construction of all parts of the Constitution together, and not of one part only.").

Similarly, the subsection immediately after the grant exemption excludes "amounts received from the state for the purpose of purchasing land, buildings or improvements or constructing buildings or improvements." Ariz. Const., art. IX, § 21(4)(c)(vi). Construing Section 21(4)(c)(v) to encompass grants, gifts, aid or contributions *from any source* would render the text of Section 21(4)(c)(vi)

superfluous to the extent those funds constitute grants, as they would under Intervenor-Defendants' broad definition of the term "grant." The Court must avoid construing the grant exemption in a manner that renders other constitutional provisions superfluous, which is the inevitable result of construing the provision to apply to grants from any source.

Finally, the history behind Article IX, Section 21 supports construing the grant exemption as limited to private grants. The grant exemption was passed in 1980 as Proposition 109. It was drafted and passed concurrently with Proposition 108, which became Article IX, Section 20 of the Arizona Constitution. Article IX, Section 20 imposes spending limitations on counties, cities, and towns, similar to those Article IX, Section 21 imposes on school districts, and even includes an identical definition of "local revenues," including an identical private grant exemption. *Compare* Ariz. Const., art. IX, § 20(3)(d)(v) *with* Ariz. Const., art. IX, § 21(4)(c)(v).

The publicity pamphlet for Propositions 108 and 109 explains that expenditures of counties, cities, towns, and school districts must be limited to curtail the "ever-increasing local tax burden." *See* ACA-APP27, Publicity Pamphlet – Sample Ballot, June 3, 1980 Special Election at 76, *available at* https://azmemory.azlibrary.gov/digital/collection/statepubs/id/10632. Supporters of the propositions observed that "[s]tate and local government spending ha[d] increased 250% from 1970 to 1979 or an annual increase of almost 11% throughout

the 1970s." ACA-APP17, *id.* at 66. The expenditures limitations were implemented to "terminate government's blank check drawn on people's earnings" and combat the pressure on governing bodies "to increase the burden on the taxpayers of this state." ACA-APP17; *see also* ACA-APP27, *id.* at 76.

In light of this purpose and history, it would make little sense to exempt ***state*** grants, gifts, aid, or contributions to counties, cities, towns, or school districts from the aggregate expenditure limitations—assuming that a state "gift" is even possible. The purpose of the aggregate expenditure limitations is to curb spending and reduce the burden on taxpayers. That purpose is entirely subverted if the state, as here, can tax its citizens and then transfer those funds to school districts under the guise of a "grant."

As illustrated above, both the text and the purpose of the grant exemption demonstrate that only *private* grants fall within the provision's exemption. Because the exemption does not encompass state grants, it has no application to funds distributed pursuant to Proposition 208. The argument that taxes levied for the benefit of school districts pursuant to Proposition 208 are exempt from the aggregate expenditure limitation in Article IX, Section 21 should be rejected, and Proposition 208's *statutory* attempt to override *constitutional* text is unconstitutional.

B. Tax Revenues Levied For the Benefit of School Districts Are Not "Grants."

Even assuming the grant exemption extended to non-private grantors (it does not), tax revenues levied for the benefit of school districts under Proposition 208 are not "grants" as that term is generally understood. The term "grant" is not defined in Article IX, thus, it must be interpreted according to its plain and ordinary meaning. *See* A.R.S. § 1-213 ("Words and phrases shall be construed according to the common and approved use of the language."). As Plaintiffs correctly state, the plain meaning of the word "grant" does not refer to mandatory taxation and spending. *See* Plaintiffs' Opening Brief at 11. Rather, the word "grant" entails a voluntary or discretionary transfer of funds to be used for a particular purpose.[4] *See, e.g.*, "Grant," Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/grant (defining "grant" as "something granted, especially: a gift (as of land or money) for a particular purpose"); *see also Simpson v. Owens*, 207 Ariz. 261, 273, ¶ 35 (App. 2004) (courts may reference well-known and reputable dictionaries in construing laws).

[4] Intervenor-Defendants suggest that "Arizona's voters exercised their 'discretion' to fund and create a dedicated grant program through Prop 208 by approving it at the polls." *See* Intervenor-Defendants' Combined Answering Brief and Separate Appendix of Appellees Invest in Education and David Lujan (March 15, 2021) at 33. This argument illustrates the sweeping nature of Intervenor-Defendants' position, as, under this logic, *all* statutory expenditures would be considered grants awarded at the discretion of voters or the legislature.

Grants also generally include an application process whereby would-be grantees must establish their eligibility to receive such funds, as well as discretion on the part of the party giving or distributing the grants. *See* Grants 101, Grants.Gov, https://www.grants.gov/learn-grants/grants-101.html ("The grant process follows a linear lifecycle that includes creating the funding opportunity, applying, making award decisions, and successfully implementing the award."); "Government Grant," Investopedia, https://www.investopedia.com/terms/g/government-grant.asp ("Government grants aren't just bestowed: they must be applied for. Getting a government grant is an extremely competitive process."); "Grant (money)," Wikipedia, https://en.wikipedia.org/wiki/Grant_(money)#cite_ref-1 ("In order to receive a grant, some form of 'Grant Writing' often referred to as either a proposal or an application is required.").

The Arizona School Board Association in its amicus brief cites some grant programs administered by the ACA as examples of "mandatory" grants. Brief of Amicus Curaie Arizona School Boards Association at 6 n. 4. They are not. For example, the Association claims that the Competes Fund grants are an example of a mandatory grant. The Association relies on the language in A.R.S. § 41-1545.02(A) that states, "[t]he monies shall be paid, by grant . . . ." However, just because the transfer of grant funds is mandatory once awarded does not mean that the grant itself is mandatory for every applicant. The Competes Fund is a highly competitive

process; not every project or every program will qualify and Competes Fund grants are not awarded to every eligible applicant. In any event, the Association overlooks the preceding sentence, which provides, "The chief executive officer ***may negotiate*** the award of monies from the Arizona competes fund." A.R.S. § 41-1545.02(A) (emphasis added); *see also* A.R.S. § 41-1545.01(C) (monies are to be invested and divested only "on notice from the chief executive officer"). The Association's reliance on the ACA's Job Training Fund as evidence of a mandatory grant is similarly misplaced. The ACA's rules for the Job Training Fund, issued under the authority of A.R.S. § 41-1005(A), requires a competitive process. *See* ACA-APP29, "Arizona Job Training Program – Program Rules & Guidelines," *Arizona Commerce Authority*, *available at* https://www.azcommerce.com/media/1542854/job-training-rules-4-6-18.pdf.

In contrast, Proposition 208's distributions contain none of the hallmarks of a "grant" as the term is ordinarily used and understood. They are mandatory, not discretionary. *See* A.R.S. § 15-1281(C) (providing that the state treasurer "shall transfer all monies in the student support and safety fund" as outlined). Nor must school districts apply or compete for Proposition 208 revenues.[5] The transfer of tax

[5] In fact, Proposition 208 expressly exempts its funding provisions from statutory requirements generally applicable to government grants. Government grants in Arizona are governed by Title 41, Chapter 24 of the Arizona Revised Statutes. A.R.S. § 41-2702 provides that "[s]tate governmental units shall award any grant in accordance with the competitive grant solicitation requirements of this

revenues is automatic. Proposition 208 simply does not operate as a grant program in the ordinary sense of the word.

To be sure, the text of A.R.S. § 15-1281(C) refers to the distribution of Proposition 208 revenues as "grants." Intervenor-Defendants, who participated in drafting Proposition 208, appear to concede that use of the word grant in A.R.S. § 15-1285 was an intentional drafting decision aimed at shoehorning distribution of the tax revenue generated by Proposition 208 into the constitutional exemption of "grants" from spending limitations. *See* Intervenor-Defendants' Combined Answering Brief at 23 & n.14 (stating that use of the word "grant" in Proposition 208 was "by specific design"). In any event, "substance controls over form" and "[c]ourts are not bound by labels"—especially labels created "by specific design." *Anderson v. Valley Union High Sch., Dist. No. 22*, 229 Ariz. 52, 55, ¶ 4 (App. 2012).

Intervenor-Defendants' argument that Proposition 208 distributions are "grants" (instead of "taxes or local revenues") focuses exclusively on the transfer of Proposition 208 tax revenues from the state to the school districts, as opposed to taxes from taxpayers being transferred directly to schools. *See* Intervenor-

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chapter," and sets forth requirements related to the submission and review of grant applications. A.R.S. § 41-2703 sets forth procedures for waiving normal solicitation and award procedures under certain circumstances, but still requires that grant solicitations and awards foregoing the traditional application process remain competitive to the extent practicable under the circumstances. Proposition 208 exempts its school funding provisions from all of these statutory requirements applicable to government grants. A.R.S. § 15-1281(E).

Defendants' Combined Answering Brief at 23–27. The elephant in the room, however, is the unavoidable fact that funds distributed to school districts under Proposition 208 originate from taxpayers and are mandatorily distributed. Under Proposition 208, taxpayers certainly do not voluntarily give their money to school districts rather they pay a tax imposed and collected by the state. Any reading of Article IX, Section 21(4)(c)(v) that would include taxes levied for the benefit of school districts within the definition of "grants" simply ignores that reality. The fact that the tax revenues generated for school districts by Proposition 208 make a pit stop in the state's coffers on their way to schools cannot transform those tax revenues into grants.

Intervenor-Defendants' broad definition of the exemption for grants would swallow the spending limit rule and make the other exemptions to the rule superfluous. Under their interpretation, any money transferred by the state for a stated purpose would be a grant. There would then be no need for at least three of the other exemptions from definition of local revenues in Article IX, Section 21(4) that relate to funding received for a specific purpose. *See* Ariz. Const., art. IX, § 21(4)(c)(vi) (exempting "amounts received from the state for the purpose of purchasing land, buildings or improvements or constructing buildings or improvements"); Ariz. Const., art. IX, § 21(4)(d)(iv) (exempting "amounts received for the purpose of funding expenditures authorized in the event of destruction of or

damage to the facilities of a school district as authorized by law"); *id.* § 21(4)(d)(v) (exempting "revenues derived from an additional state transaction privilege tax rate increment for educational purposes that was authorized by the voters before January 1, 2001"). Again, construing Article IX, Section 21(4)(c)(v) to render these provisions surplusage violates basic tenets of constitutional interpretation.

Finally, and as noted above, the fundamental purpose of section 21 was to curtail increasing tax burdens. Construing "grants" to include taxes raised for the benefit of school districts would be directly contrary to that purpose. The Court should reject Intervenor-Defendants' attempt to expand the definition of "grants" to include the mandatory taxing and spending provisions of Proposition 208.

C. A.R.S. § 15-1285 Is Not Severable.

Plaintiffs correctly argue that Proposition 208's improper attempt to exempt tax revenues raised for the benefit of school districts from constitutional spending limitations is not severable from the rest of the Proposition, and that Proposition 208 must be enjoined in its entirety. In determining whether a legislative measure begun by initiative is severable, the Court first asks, "whether the valid portion, considered separately, can operate independently and is enforceable and workable." *Randolph v. Groscost*, 195 Ariz. 423, 427, ¶ 15 (1999). If it is, the Court will uphold it "unless doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other."

Id.; *see also Citizens Clean Elections Comm'n v. Myers*, 196 Ariz. 516, 522, ¶ 23 (2000).

The plain purpose of Proposition 208 was to tax high-earning individuals to raise revenue that could then be spent by school districts for specified purposes. Leaving the tax in place while severing the invalid attempt to exempt taxes raised from the aggregate spending limitation is neither workable nor rational. Proposition 208 does little to foster its purpose of providing increased support for school districts if revenue raised under the act cannot be spent. It defies logic to suggest that voters would have voted for a tax increase expected to generate $827 million in its first year alone if that revenue could not be spent by its intended recipients. *See* Plaintiffs' Opening Brief at 20 (collecting authorities). For fiscal year 2020, budgeted expenditures for school districts collectively were only $49.3 million below the aggregate expenditure limit, and statewide school districts expenditures were expected to exceed the aggregate expenditure limitation for fiscal year 2021. *See* Plaintiffs' APPV2-64.[6] With school districts already operating at or near aggregate expenditure limits, the reality is that all or a substantial portion of Proposition 208's expected revenues cannot be spent. Leaving the taxing provisions

[6] *See* ACA-APP44, JLBC FY 2021 Appropriations report (July 2020) at 148, https://www.azleg.gov/jlbc/21AR/FY2021AppropRpt.pdf.

in place when the revenues cannot not be spent is irrational, and clearly contrary to the voters' intent. Proposition 208 should be enjoined in its entirety.

D. Plaintiffs' Claims Are Ripe.

Intervenor-Defendants contend that Plaintiffs' facial challenge to Proposition 208 is not ripe because school districts have not yet received or spent Proposition 208 tax revenues. *See* Intervenor-Defendants' Combined Answering Brief at 16. This argument ignores the fact that Plaintiffs challenge Proposition 208 *in its entirety*. "Ripeness is closely related to standing in that enforcement of the principle 'prevents a court from rendering a premature judgment or opinion on a situation that may never occur.'" *In re Estate of Stewart*, 230 Ariz. 480, 484, ¶ 11 (App. 2012). Proposition 208's income tax surcharge went into effect on December 31, 2020. A.R.S. § 43-1013(A). Plaintiffs undoubtedly have a right to challenge the constitutionality of a statute that is currently in effect. *See Winkle v. City of Tucson*, 190 Ariz. 413, 418 (1997) ("If and when an initiative passes, a court may then determine whether its contents are preempted . . . or rendered invalid by any state law or constitutional clause then existing.").

Similarly, Intervenor-Defendants postulate that future circumstances may be such that school district spending will not exceed the aggregate spending limitation, either because school expenditures will decrease or further legislative action would increase the spending cap. Again, this argument misses the mark. The mere

possibility that the expenditure of Proposition 208 revenue might not exceed spending limitations does not strip litigants of their right to mount a facial challenge to the constitutionality of a statute that is currently in place and having real world impacts on Plaintiffs and other Arizonans. There is always the possibility that intervening legislation or other circumstances will impact pending court proceedings. But courts do not wait to rule on the constitutionality of existing legislation on the chance it may later be changed. *See Glavin v. Clinton*, 19 F. Supp. 2d 543, 547 (E.D. Va. 1998), *aff'd sub nom. Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316 (1999) ("Congress may always moot out a controversy by passing new legislation, but that fact does not shield agency action from judicial review.").

Finally, despite Intervenor-Defendants' efforts to inject factual disputes into this case, the issue presented is purely legal. Proposition 208's *statutory* attempt to override *constitutional* spending limits is facially invalid. *See State v. Fell*, 249 Ariz. 1, 3 ¶ 6 (App. 2020) ("But, of course, statutes must conform with the mandates of our state constitution."). No further factual development is necessary for the Court to find that Proposition 208's blatant attempt to subvert constitutional spending limits is invalid, and the case is ripe for review. *See Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 581 (1985) (holding that a case was ripe where it raised pure issue of law requiring no further factual development).

II. ARTICLE IX, SECTION 21 REPRESENTS THE PUBLIC'S VIEW THAT CONTINUAL TAX INCREASES WILL NEGATIVELY IMPACT ARIZONA'S ECONOMY.

As explained above, Article IX, Section 21's spending limit reflects a general Arizona voter policy against higher taxes. *See* ACA-APP27, June 3, 1980 Special Election Publicity Pamphlet, Legislative Council Arguments Favoring Proposition 109 (Article IX, Section 21) (explaining how the lack of an adequate limitation on total spending by school districts and community colleges is responsible for the "ever-increasing" local tax burden); *see also* ACA-APP47, November 4, 1986 General Election Publicity Pamphlet, Legislative Council Arguments Opposing Proposition 101, at 12 (cautioning that "[r]aising the limit may raise your taxes"); ACA-APP47, November 4, 1986 General Election Publicity Pamphlet, Legislative Council Arguments Opposing Proposition 101, at 13 (warning that "this Proposition allows more spending of both state and local tax money by school districts").[7]

[7] Intervenor-Defendants misconstrue Article IX, Section 21 as being concerned only with increases in *local* property taxes. *See* Intervenor-Defendants' Combined Answering Brief at 28. Although high local property taxes were certainly a major impetus for Article IX, Section 21, the definition of local income under Article IX, Section 21 is by no means limited to property taxes or even taxes levied by local governments. *See* Ariz. Const., art. IX, § 21(4)(c) (defining "local revenues" to include "*all* monies, revenues, funds, property and receipts of any kind whatsoever received by or for the account of a school district" (emphasis added)). Further, and as noted previously, the pamphlet materials related to Article IX, Sections 20 and 21 belie any argument that these constitutional amendments were aimed at curtailing only local property taxes.

One of the reasons behind the public's reluctance to increase taxes is that higher taxes negatively impact economic development by making Arizona less competitive than neighboring states, as one Arizona voter explained in 1992 in reference to another tax limiting initiative:

> Some analyses rank Arizona as one of the highest taxed states in the nation. This reputation hinders economic development, discourages businesses from moving to this state, promotes migration of businesses from this state and places a competitive disadvantage on businesses remaining here.

ACA-APP52, November 3, 1992 General Election Publicity Pamphlet, Legislative Council Arguments Favoring Proposition 108 (Article IX, Section 22), at 46.[8]

This is not merely one voter's opinion, but it is supported by decades of research. According to the Tax Foundation, twenty-six studies regarding the empirical relationship between taxes and economic growth were conducted between 1983 and 2012. *See* William McBride, *What Is the Evidence on Taxes and Growth?*, Tax Foundation (Dec. 18 2012), https://taxfoundation.org/what-evidence-taxes-and-growth/. Of those twenty-six studies, all but three[9] found that taxes have a negative effect on economic growth even after controlling for various factors such as

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[8] In addition to Article IX, Section 21, Sections 20 and 22 of Article IX are additional examples of constitutional amendments reflecting the general voter policy to keep taxes low in Arizona. The clear motivation behind these amendments was to make it more difficult to raise taxes, in part to keep Arizona competitive in attracting and retaining business.

[9] The three outliers were from studies performed before 1997.

government spending, business cycle conditions, and monetary policy. *Id.* The studies that distinguish between types of taxes found that corporate income taxes are the most harmful, followed closely by personal income taxes. *Id.*

The findings from these studies are illustrated by significant real-world examples. Within the last year, numerous big-name technology companies have left California, which has one of the highest income tax rates in the nation,[10] and have relocated to states with lower or no income taxes. *See* Andrew Osterland, *Pandemic Heats Up State Tax Competition to Attract Businesses and Residents*, CNBC (Feb. 8, 2021, 8:01 AM), https://cnb.cx/36T4thr (explaining that "[m]ost experts expect more people and businesses will choose to locate where they can pay lower taxes," citing tech-companies Oracle and Hewlett Packard's relocation from California's Silicon Valley to Houston, Texas (which has no income tax) as "the most prominent examples"); *see also* Jessica Bursztynsky, *Palantir to Relocate Headquarters from Silicon Valley to Colorado*, CNBC (Aug. 19, 2020, 4:58 PM), https://cnb.cx/3iU0JQa (discussing the relocation of data analytics software company Palantir Technologies from California to Denver, Colorado, which has a flat income tax rate of 4.63%).

[10] As of this year, California's top income tax rate is 12.3%, with Arizona's new top rate of 8% not far behind.

A recent lawsuit filed in the United States Supreme Court by the State of New Hampshire further illustrates the economic advantages resulting from low income tax rates. On October 19, 2020, New Hampshire filed a Motion for Leave to File a Bill of Complaint ("Motion for Leave") in the United States Supreme Court alleging that Massachusetts' newly enacted tax regulation—which subjects nonresident-earned income received for services performed outside of Massachusetts to Massachusetts' income tax—violates the United States Constitution's due process and commerce clauses. *See generally* ACA-APP93–135, Brief in Support of Motion for Leave To File Bill of Complaint, *New Hampshire v. Massachusetts*, No. 220154 (2020). Throughout its briefing, New Hampshire repeatedly emphasized the important role its income tax policy has played in bringing people and businesses into the state, which, in turn, has benefitted its overall economy:

> For decades, New Hampshire has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax. . . . New Hampshire's sovereign policy choice has had profound effects. It has resulted in, on average, higher per capita income, lower unemployment, and a competitive edge in attracting new businesses and residents. In other words, it has helped create a "New Hampshire Advantage" that is central to New Hampshire's identity. It is through this advantage that New Hampshire successfully distinguishes itself as a sovereign and competes in the market for people, businesses, and economic prosperity.

ACA-APP60–61, Bill of Complaint ¶¶ 2–3, *New Hampshire v. Massachusetts*, No. 220154 (2020). Like New Hampshire, which relies on its tax policy to keep itself economically competitive, Arizona voters similarly implemented the school district

spending cap in Article IX, Section 21 to prevent heightened taxes that hinder economic development in the State.

A recent study conducted by the American Enterprise Institute ("AEI") confirms a direct correlation between a state's income tax rate and its ability to attract and retain businesses and individuals within its borders. AEI analyzed the driving factors behind America's top ten inbound and top ten outbound states in 2019, which revealed that state income taxes play a significant role. *See* Mark J. Perry, *Top 10 Inbound vs. Top 10 Outbound US States in 2019: How Do They Compare on a Variety of Measures?*, AEI (Nov. 18, 2020), https://www.aei.org/carpe-diem/top-10-inbound-vs-top-10-outbound-us-states-in-2019-how-do-they-compare-on-a-variety-of-tax-burden-business-climate-fiscal-health-energy-housing-costs-and-economic-measures/. According to AEI's study, which utilized data from the Tax Foundation and U.S. Census Bureau, the average top individual income tax rate in the top ten inbound states was 3.5% in 2019 compared to an average top income tax rate of 7.1% in the top 10 outbound states. *Id.*; *see also* Osterland, *supra* (explaining that four out of five of the of the highest outbound states ranked in the bottom five for business tax climate in 2021 by the Tax Foundation).

Arizona was the number one inbound state in 2018 and 2019, during which its highest income tax rate was 4.54% in 2018 and 4.5% in 2019. *See* Perry, *supra*.

According to a study by the Tax Foundation, this ranked Arizona as the fifth lowest income tax state in the nation, thereby rendering Arizona very competitive among neighboring states for attracting and retaining business and industry. *See* Janelle Cammenga & Jared Walczak, *Arizona Proposition 208 Threatens Arizona's Status as a Destination for Interstate Migration*, Tax Foundation (Oct. 14, 2020), https://taxfoundation.org/arizona-proposition-208-education-funding/. Prop 208's substantial increase from 4.5% to 8% for the top tax bracket has moved Arizona to the eighth highest of all 50 states, making it an outlier in its region. *Id.* Indeed, Arizona's 8% top income tax rate is higher than the average top rate of the top ten outbound states (7.1%). *See* Perry, *supra*. In contrast, Arizona's neighboring states—New Mexico, Colorado, Utah, and Nevada—all have top income tax rates of under 5% (with Nevada having no income tax).

Ultimately, Arizona's ability to attract and retain business and industry is severely handicapped by Prop. 208's unlawful tax increase. A tax increase such as this is precisely what the voters sought to prevent when they amended the Constitution to implement a spending cap on school districts. If this Court were to hold that Prop. 208 lawfully raises education funds through increased taxes (that by the plain terms of Article IX, Section 21, cannot be spent), the Court would be violating the will of the voters, which is to keep taxes low to maintain Arizona's competitive status in attracting people and businesses to this state.

CONCLUSION

Given that Proposition 208's distributions will violate the aggregate expenditure limit in Article IX, Section 21 and are not exempt from such through the grant exemption, the Court should vacate the order of the trial court denying a preliminary injunction and remand this matter with instructions to enter the preliminary injunction as requested by Plaintiffs.

RESPECTFULLY SUBMITTED this 22nd day of March, 2021.

FENNEMORE CRAIG, P.C.

By /s/ *Timothy J. Berg*
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18249705

SUPREME COURT OF ARIZONA

KAREN FANN, an individual, et al., Plaintiffs/Appellants, v. STATE OF ARIZONA, et al., Defendants/Appellees.	Arizona Supreme Court No. CV 21-0058-T/AP Court of Appeals, Division One No. 1 CA-CV-21-0087 Maricopa County Superior Court No. CV2020-015495 No. CV2020-015509 (Consolidated)

APPENDIX TO BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS/APPELLANTS

FILED PURSUANT TO ARCAP 16(b)(1)(B) AND WITH WRITTEN CONSENT OF ALL PARTIES

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APPENDIX TO BRIEF OF AMICUS CURIAE

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8. Punctuation

A properly drafted bill requires little punctuation. Short simple sentences avoid the need for excessive punctuation, facilitate amendment and reduce the possibility of misinterpretation.

Observe the following rules designed to promote uniformity in punctuation:

Omit the comma before the conjunction within a series of words, phrases or clauses. For example, "men, women and children"; not "men, women, and children".

Do not use a colon in the text of a section except to introduce a series. For a series of indented subsections or paragraphs following a colon, use a period at the end of each.

If a sentence may be divided and the second clause is complete with subject and predicate, generally use a comma although connected by a conjunction, as in the following: "The department has jurisdiction, and it may issue appropriate orders to compel obedience." If the second clause is not complete, omit the comma, as in "The department has jurisdiction and may hold hearings."

Never separate the subject of the sentence from its verb by only one comma. For example, do not write "The amendment, which had been approved by the committee was accepted." Place a comma after the word "committee" so that the parenthetical phrase "which had been approved by the committee" is separated from the rest of the sentence.

Use commas sparingly. They are used to separate days from years in dates, as, "July 1, 1965 or . . . ".

Place a period or comma outside the last quotation mark unless the entire sentence is quoted.

9. Section and internal references

In numbering sections of a bill, the first section is always written as "Section 1." All following sections are designated by the abbreviation, "Sec." and the appropriate number. The abbreviation is not used when designating the section of the statutes to be amended in the immediate section of the bill, as:

Section 1. Section 16-401, Arizona Revised Statutes, is amended to read:

In referring to a section of the statutes within the body of the bill, the word "section" is written out, as "section 35-173".

In citing a complete article, use the following style:

". . . title 12, chapter 6, article 2", "article 2 of this chapter" or "chapter 3, article 1 of this title."

When making a reference within the same section to another division, use the following style:

(a) . . . as provided in subsection A.

(b) . . . as provided in subsection A, paragraph 1.

(c) . . . as provided in subsection A, paragraph 1, subdivision (a).

(d) . . . as provided in subsection A, paragraph 1, subdivision (a), item (i).

If reference is made to a division of another section of the statutes, the designation would be, "as provided in section 42-101, subsection A". Also, internal references within a section which refer to any other section of Arizona Revised Statutes should be denoted as such by the addition of the phrase "of this section". Use the terminology "of this section" to clarify a citation to a division of the instant section if the instant section also cites to any other section of the statutes.

Never divide a unit unless there are at least two smaller units involved.

STATE OF ARIZONA
ESTADO DE ARIZONA

PUBLICITY PAMPHLET—SAMPLE BALLOT
FOLLETO DE PUBLICIDAD—BOLETA DE MUESTRA
1980

Propositions to be submitted to the qualified electors of the State of Arizona at the

Proposiciones que se presentarán a los electores calificados del Estado de Arizona en la

SPECIAL ELECTION
ELECCION ESPECIAL

JUNE 3, 1980
3 de JUNIO 1980

COMPILED AND ISSUED BY
COMPILADO Y EMITIDO POR

ROSE MOFFORD

Secretary of State
Secretario de Estado

PROPOSITION 108
TEST OF PROPOSED AMENDMENT

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

9. The following amendment of article IX, Constitution of Arizona, by adding section 20, is proposed as one ballot proposition to become valid when approved by a majority of the qualified electors voting thereon and upon proclamation of the governor.

20. Expenditure limitation; adjustments; reporting

SECTION 20. (1) THE ECONOMIC ESTIMATES COMMISSION SHALL DETERMINE AND PUBLISH PRIOR TO APRIL 1 OF EACH YEAR THE EXPENDITURE LIMITATION FOR THE FOLLOWING FISCAL YEAR FOR EACH COUNTY, CITY AND TOWN. THE EXPENDITURE LIMITATIONS SHALL BE DETERMINED BY ADJUSTING THE AMOUNT OF ACTUAL PAYMENTS OF LOCAL REVENUES FOR EACH SUCH POLITICAL SUBDIVIDION FOR FISCAL YEAR 1979-1980 TO REFLECT THE CHANGES IN THE POPULATION OF EACH POLITICAL SUBDIVISION AND THE COST OF LIVING. THE GOVERNING BOARD OF ANY POLITICAL SUBDIVISION SHALL NOT AUTHORIZE EXPENDITURES OF LOCAL REVENUES IN EXCESS OF THE LIMITATION PRESCRIBED IN THIS SECTION, EXCEPT AS PROVIDED IN SUBSECTIONS (2), (6) AND (9) OF THIS SECTION.

(2) EXPENDITURES IN EXCESS OF THE LIMITATIONS DETERMINED PURSUANT TO SUBSECTION (1) OF THIS SECTION MAY BE AUTHORIZED AS FOLLOWS:

(a) UPON AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE GOVERNING BOARD FOR EXPENDITURES DIRECTLY NECESSITATED BY A NATURAL OR MAN-MADE DISASTER DECLARED BY THE GOVERNOR. ANY EXPENDITURES IN EXCESS OF THE EXPENDITURE LIMITATION, AS AUTHORIZED BY THIS PARAGRAPH, SHALL NOT AFFECT THE DETERMINATION OF THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION IN ANY SUBSEQUENT YEARS. ANY EXPENDITURES AUTHORIZED PURSUANT TO THIS PARAGRAPH SHALL BE MADE EITHER IN THE FISCAL YEAR IN WHICH THE DISASTER IS DECLARED OR IN THE SUCCEEDING FISCAL YEAR.

(b) UPON THE AFFIRMATIVE VOTE OF SEVENTY PER CENT OF THE MEMBERS OF THE GOVERNING BOARD FOR EXPENDITURES DIRECTLY NECESSITATED BY A NATURAL OR MAN-MADE DISASTER NOT DECLARED BY THE GOVERNOR, SUBJECT TO THE FOLLOWING:

(i) THE GOVERNING BOARD REDUCING EXPENDITURES BELOW THE EXPENDITURE LIMITATION DETERMINED PURSUANT TO SUBSECTION (1) OF THIS SECTION BY THE AMOUNT OF THE EXCESS EXPENDITURE FOR THE FISCAL YEAR FOLLOWING A FISCAL YEAR IN WHICH EXCESS EXPENDITURES WERE MADE PURSUANT TO THIS PARAGRAPH; OR

(ii) APPROVAL OF THE EXCESS EXPENDITURE BY A MAJORITY OF THE QUALIFIED ELECTORS VOTING EITHER AT A SPECIAL ELECTION HELD BY THE GOVERNING BOARD OR AT A REGULARLY SCHEDULED ELECTION FOR THE NOMINATION OR ELECTION OF THE MEMBERS OF THE GOVERNING BOARD, IN THE MANNER PROVIDED BY LAW. IF THE EXCESS EXPENDITURE IS NOT APPROVED BY A MAJORITY OF THE QUALIFIED ELECTORS VOTING, THE GOVERNING BOARD SHALL FOR THE FISCAL YEAR WHICH IMMEDIATELY FOLLOWS THE FISCAL YEAR IN WHICH THE EXCESS EXPENDITURES ARE MADE, REDUCE EXPENDITURES BELOW THE EXPENDITURE LIMITATION DETERMINED PURSUANT TO SUBSECTION (1) OF THIS SECTION BY THE AMOUNT OF THE EXCESS EXPENDITURES. ANY EXPENDITURES IN EXCESS OF THE EXPENDITURE LIMITATION, AS AUTHORIZED BY THIS PARAGRAPH, SHALL NOT AFFECT THE DETERMINATION OF THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION IN ANY SUBSEQUENT YEARS. ANY EXPENDITURES PURSUANT TO THIS PARAGRAPH SHALL BE MADE EITHER IN THE FISCAL YEAR IN WHICH THE DISASTER OCCURS OR IN THE SUCCEEDING FISCAL YEAR.

(c) UPON AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF THE MEMBERS OF THE GOVERNING BOARD AND APPROVAL BY A MAJORITY OF THE QUALIFIED ELECTORS VOTING EITHER AT A SPECIAL ELECTION HELD BY THE GOVERNING BOARD IN A MANNER PRESCRIBED BY LAW, OR AT A REGULARLY SCHEDULED ELECTION FOR THE NOMINATION OR ELECTION OF THE MEMBERS OF THE GOVERNING

PROPOSICION 108

TEXTO DE LA ENMIENDA PROPUESTA

Que se resuelva por el Senado del Estado de Arizona, con el acuerdo de la Cámara de Representantes:

9. La siguiente enmienda de Artículo IX, Constitución de Arizona, agregándole la sección 20, se propone como una proposición de boleta que entrará en vigor al ser aprobada por la mayoría de los electores aptos que la voten y al ser proclamada por el gobernador.

20. Limitación de gastos; ajustes; presentación de informes

SECCION 20. (1) LA COMISION PARA PRESUPUESTOS O PROYECCIONES ECONOMICOS DETERMINARA Y PUBLICARA ANTES DE ABRIL 1 DE CADA AÑO LA LIMITACION DE GASTOS PARA EL SIGUIENTE AÑO FISCAL PARA CADA CONDADO, CIUDAD Y PUEBLO. LA LIMITACION DE GASTOS SERA DETERMINADA MEDIANTE EL AJUSTE DE LA CANTIDAD DE PAGOS REALES DE RENTAS LOCALES PARA CADA SUBDIVISION POLITICA CORRESPONDIENTE PARA EL AÑO FISCAL 1979-1980 A FIN DE REFLEJAR LOS CAMBIOS DEMOGRAFICOS DE CADA SUBDIVISION POLITICA Y EN LOS COSTOS DE LA VIDA. LA JUNTA O CONSEJO ADMINISTRATIVO DE CUALQUIER SUBDIVISION POLITICA NO DEBERA AUTORIZAR GASTOS DE RENTAS LOCALES QUE EXCEDAN LA LIMITACION PRESCRITA EN ESTA SECCION, SALVO SEGUN SE DISPONE EN LAS SUBSECCIONES (2), (6) Y (9) DE ESTA SECCION.

(2) GASTOS POR ENCIMA DE LAS LIMITACIONES DETERMINADAS DE ACUERDO CON LA SUBSECCION (1) SE PODRAN AUTORIZAR DE DE SIGUIENTES MANERAS:

(a) CON LAS VOTACION AFIRMATIVA DE DOS TERCIOS DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO PARA GASTOS OCASIONADOS DIRECTAMENTE POR UN DESASTRE, SEA DE ORIGEN NATURAL O DE CAUSA HUMANA, DECLARADO POR EL GOBERNADOR. LOS GASTOS POR ENCIMA DE DE LA LIMITACION DE GASTOS, AUTORIZADOS EN ESTE PARRAFO, NO AFECTARAN LA DETERMINACION DE LA LIMITACION DE GASTOS SEGUN LA SUBSECCION (1) DE ESTA SECCION EN ANO SIGUIENTE ALGUNO. CUALQUIER GASTO AUTORIZADO DE ACUERDO CON ESTE PARRAFO SE HARA O EN EL AÑO FISCAL EN EL QUE EL DESASTRE SE DECLARA O EN EL SIGUIENTE AÑO FISCAL.

(b) CON LA VOTACION AFIRMATIVA DEL SETENTA POR CIENTO DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO, PARA GASTOS OCASIONADOS DIRECTAMENTE POR UN DESASTRE, SEA DE ORIGEN NATURAL O DE CAUSA HUMANA, QUE NO DECLARE EL GOBERNADOR, DE ACUERDO CON LO SIGUIENTE:

(i) LA REDUCCION POR EL CONSEJO ADMINISTRATIVO DE GASTOS POR DEBAJO DE LA LIMITACION DE GASTOS DETERMINADA DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION EN LA CANTIDAD DE GASTOS EXTRAS PARA EL AÑO FISCAL SUBSECUENTE A UN AÑO FISCAL EN QUE SE HICIERAN GASTOS EXTRAS SEGUN ESTE PARRAFO; O

(ii) LA APROBACION DE LOS GASTOS EXTRAS POR LA MAYORIA DE LOS VOTANTES APTOS, SEA EN ELECCION ESPECIAL REALIZADA POR EL CONSEJO ADMINISTRATIVO O EN ELECCION ORDINARIA PARA EL NOMBRAMIENTO O ELECCION DE LOS MIEMBROS DE LA JUNTA O CONSEJO ADMINISTRATIVO, DE LA MANERA DISPUESTA POR LA LEY. SI NO QUEDA APROBADO EL GASTO SOBRANTE POR LA MAYORIA DE LOS VOTANTES APTOS, EL CONSEJO ADMINISTRATIVO REBAJARA, PARA EL AÑO FISCAL INMEDIATAMENTE SIGUIENTE AL AÑO FISCAL EN QUE SE HAGAN LOS GASTOS EXTRAS, LOS GASTOS POR DEBAJO DE LA LIMITACION DE GASTOS DETERMINADA DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION EN LA CANTIDAD DE DICHOS GASTOS EXTRAS. CUALESQUIER GASTOS POR ENCIMA DE LA LIMITACION DE GASTOS, AUTORIZADA POR ESTE PARRAFO, NO AFECTARAN LA DETERMINACION DE LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION EN AÑO SUBSIGUIENTE ALGUNO. TODO GASTO HECHO DE ACUERDO CON ESTE PARRAFO SE HARA O EN EL AÑO FISCAL EN QUE OCURRA EL DESASTRE O EN EL AÑO FISCAL SUCESIVO.

(c) MEDIANTE VOTO AFIRMATIVO DE POR LO MENOS DOS TERCIOS DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO Y APROBACION POR LA MAYORIA DE LOS VOTANTES APTOS, YA EN ELECCIONES ESPECIALES REALIZADAS POR LA JUNTA ADMINISTRATIVA CONFORME A LA LEY, O EN ELECCIONES ORDINARIAS PARA EL NOMBRAMIENTO O ELECCION DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO. DICHA APROBACION POR LA MAYORIA DE LOS VOTANTES APTOS SERA POR UNA CANTIDAD ESPECIFICA EN EXCESO DE LA LIMITACION DE GASTOS, Y

BOARD. SUCH APPROVAL BY A MAJORITY OF THE QUALIFIED ELECTORS VOTING SHALL BE FOR A SPECIFIC AMOUNT IN EXCESS OF THE EXPENDITURE LIMITATION, AND SUCH APPROVAL MUST OCCUR PRIOR TO THE FISCAL YEAR IN WHICH THE EXPENDITURE LIMITATION IS TO BE EXCEEDED. ANY EXPENDITURES IN EXCESS OF THE EXPENDITURE LIMITATION, AS AUTHORIZED BY THIS SUBDIVISION, SHALL NOT AFFECT THE DETERMINATION OF THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION, IN SUBSEQUENT YEARS.

(3) AS USED IN THIS SECTION:

(a) "BASE LIMIT" MEANS THE AMOUNT OF ACTUAL PAYMENTS OF LOCAL REVENUES FOR FISCAL YEAR 1979-1980 AS USED TO DETERMINE THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(b) "COST OF LIVING" MEANS EITHER:

(i) THE PRICE OF GOODS AND SERVICES AS MEASURED BY THE IMPLICIT PRICE DEFLATOR FOR THE GROSS NATIONAL PRODUCT OR ITS SUCCESSOR AS REPORTED BY THE UNITED STATES DEPARTMENT OF COMMERCE OR ITS SUCCESSOR AGENCY.

(ii) A DIFFERENT MEASURE OR INDEX OF THE COST OF LIVING ADOPTED AT THE DIRECTION OF THE LEGISLATURE, BY CONCURRENT RESOLUTION, UPON AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERSHIP OF EACH HOUSE OF THE LEGISLATURE. SUCH MEASURE OR INDEX SHALL APPLY FOR SUBSEQUENT FISCAL YEARS, EXCEPT IT SHALL NOT APPLY FOR THE FISCAL YEAR FOLLOWING THE ADOPTION OF SUCH MEASURE OR INDEX IF THE MEASURE OR INDEX IS ADOPTED AFTER MARCH 1 OF THE PRECEDING FISCAL YEAR.

(c) "EXPENDITURE" MEANS ANY AUTHORIZATION FOR THE PAYMENT OF LOCAL REVENUES.

(d) "LOCAL REVENUES" INCLUDES ALL MONIES, REVENUES, FUNDS, FEES, FINES, PENALTIES, TUITIONS, PROPERTY AND RECEIPTS OF ANY KIND WHATSOEVER RECEIVED BY OR FOR THE ACCOUNT OF A POLITICAL SUBDIVISION OR ANY OF ITS AGENCIES, DEPARTMENTS, OFFICES, BOARDS, COMMISSIONS, AUTHORITIES, COUNCILS AND INSTITUTIONS, EXCEPT:

(i) ANY AMOUNTS OR PROPERTY RECEIVED FROM THE ISSUANCE OR INCURRENCE OF BONDS OR OTHER LAWFUL LONG-TERM OBLIGATIONS ISSUED OR INCURRED FOR A SPECIFIC PURPOSE, OR COLLECTED OR SEGREGATED TO MAKE PAYMENTS OR DEPOSITS REQUIRED BY A CONTRACT CONCERNING SUCH BONDS OR OBLIGATIONS. FOR THE PURPOSE OF THIS SUBDIVISION LONG-TERM OBLIGATIONS SHALL NOT INCLUDE WARRANTS ISSUED IN THE ORDINARY COURSE OF OPERATION OR REGISTERED FOR PAYMENT, BY A POLITICAL SUBDIVISION.

(ii) ANY AMOUNTS OR PROPERTY RECEIVED AS PAYMENT OF DIVIDENDS OR INTEREST, OR ANY GAIN ON THE SALE OR REDEMPTION OF INVESTMENT SECURITIES, THE PURCHASE OF WHICH IS AUTHORIZED BY LAW.

(iii) ANY AMOUNTS OR PROPERTY RECEIVED BY A POLITICAL SUBDIVISION IN THE CAPACITY OF TRUSTEE, CUSTODIAN OR AGENT.

(iv) ANY AMOUNTS RECEIVED AS GRANTS AND AID OF ANY TYPE RECEIVED FROM THE FEDERAL GOVERNMENT OR ANY OF ITS AGENCIES.

(v) ANY AMOUNTS RECEIVED AS GRANTS, AID, CONTRIBUTIONS OR GIFTS OF ANY TYPE EXCEPT AMOUNTS RECEIVED DIRECTLY OR INDIRECTLY IN LIEU OF TAXES RECEIVED DIRECTLY OR INDIRECTLY FROM ANY PRIVATE AGENCY OR ORGANIZATION OR ANY INDIVIDUAL.

(vi) ANY AMOUNTS RECEIVED FROM THE STATE WHICH ARE INCLUDED WITHIN THE APPROPRIATION LIMITATION PRESCRIBED IN SECTION 17 OF THIS ARTICLE.

(vii) ANY AMOUNTS RECEIVED PURSUANT TO A TRANSFER DURING A FISCAL YEAR FROM ANOTHER AGENCY, DEPARTMENT, OFFICE, BOARD, COMMISSION, AUTHORITY, COUNCIL OR INSTITUTION OF THE SAME POLITICAL SUBDIVISION WHICH WERE INCLUDED AS LOCAL REVENUES FOR SUCH FISCAL YEAR OR WHICH ARE EXCLUDED FROM LOCAL REVENUE UNDER OTHER PROVISIONS OF THIS SECTION.

(viii) ANY AMOUNTS OR PROPERTY ACCUMULATED FOR THE PURPOSE OF PURCHASING LAND, BUILDINGS OR IMPROVEMENTS OR CONSTRUCTING BUILDINGS OR IMPROVEMENTS, IF SUCH ACCUMULATION AND PURPOSE HAVE BEEN APPROVED BY THE VOTERS OF THE POLITICAL SUBDIVISION.

DEBE DARSE DICHA APROBACION ANTES DEL AÑO FISCAL EN EL QUE SE VAYA A EXCEDER LA LIMITACION DE GASTOS. NINGUN GASTO POR ENCIMA DE LA LIMITACION DE GASTOS, DETERMINADA POR ESTA SUBDIVISION, AFECTARA LA DETERMINACION DE LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION, EN AÑO SUBSIGUIENTE ALGUNO.

(3) DE ACUERDO CON SU EMPLEO EN ESTA SECCION:

(a) "LIMITE BASICO" SIGNIFICA LA CANTIDAD DE PAGOS REALES DE REDITOS O RENTAS LOCALES PARA EL AÑO FISCAL 1979-1980 QUE SIRVE PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION.

(b) "COSTOS DE LA VIDA" SIGNIFICA O:

(i) EL PRECIO DE BIENES Y SERVICIOS MEDIDOS POR EL REDUCTOR IMPLICITO DE PRECIOS ("IMPLICIT PRICE DEFLATOR") PARA LA PRODUCCION BRUTA NACIONAL ("GROSS NATIONAL PRODUCT") O EL SISTEMA CONTABLE QUE LA REEMPLACE SEGUN INFORMACION DEL DEPARTAMENTO DE COMERCIO DE LOS E.U. O LA AGENCIA QUE LO REEMPLACE.

(ii) UNA MEDICION O INDICE DIFERENTE DE LOS COSTOS DE VIDA ADOPTADO POR ORDEN DE LA LEGISLATURA, POR RESOLUCION CONCURRENTE, CON EL VOTO AFIRMATIVO DE DOS TERCIOS DE LOS MIEMBROS DE CADA CAMARA LEGISLATIVA. DICHA MEDICION O INDICE SERA APLICABLE EN AÑOS FISCALES SUBSECUENTES A LA ADOPCION DE LA MEDICION O INDICE SALVO QUE NO SE APLICARA AL AÑO FISCAL SIGUIENTE LA APROBACION DE DICHA MEDICION O INDICE SI SE ADOPTE LA MEDICION O INDICE DESPUES DE MARZO 1 DEL AÑO FISCAL ANTERIOR.

(c) "GASTO" SIGNIFICA TODA AUTORIZACION DE PAGO DE RENTAS LOCALES.

(d) "RENTAS LOCALES" INCLUYEN TODO DINERO, RENTAS O REDITOS, FONDOS, CUOTAS, MULTAS, SANCIONES, DERECHOS DE MATRICULA, PROPIEDAD Y RECIBOS DE CUALQUIER TIPO QUE SEAN RECIBIDOS POR UNA SUBDIVISION POLITICA O A FAVOR DE ESA O POR CUALQUIERA DE SUS AGENCIAS, DEPARTAMENTOS, SUCURSAL, JUNTAS, COMISIONES, AUTORIDADES, CONSEJOS E INSTITUCIONES, O A FAVOR DE ESTOS MISMOS, CON LA EXCEPCION DE:

(i) CUALQUIER CANTIDAD O PROPIEDAD RECIBIDA COMO RESULTADO DE LA EMISION O CONTRACCION DE BONOS U OTRAS OBLIGACIONES A LARGO PLAZO EMITIDAS O CONTRAIDAS CON MOTIVO ESPECIFICO, O RECAUDADAS O SEPARADAS PARA HACER PAGOS O DEPOSITOS EXIGIDOS POR UN CONTRATO RELATIVO A DICHOS BONOS U OBLIGACIONES. PARA LOS PROPOSITOS DE ESTA SUBDIVISION, LAS OBLIGACIONES A LARGO PLAZO NO INCLUIRAN CERTIFICADOS O GARANTIAS EMITIDOS EN EL CURSO NORMAL DE OPERACION O REGISTRADOS COMO PAGO, POR UNA SUBDIVISION POLITICA.

(ii) TODA CANTIDAD O PROPIEDAD RECIBIDA COMO PAGO DE DIVIDENDOS O INTERES, O CUALQUIER GANANCIA EN LA VENTA O REDENCION DE VALORES INVERTIDOS, CUYA COMPRA SE AUTORICE POR LEY.

(iii) CUALQUIER CANTIDAD O PROPIEDAD RECIBIDA POR UNA SUBDIVISION POLITICA EN CALIDAD DE FIDUCIARIO, CONSERVADOR, GUARDIAN, O AGENTE.

(iv) TODA SUMA RECIBIDA COMO DONACION Y ASISTENCIA DE CUALQUIER TIPO DEL GOBIERNO FEDERAL O DE CUALQUIERA DE SUS AGENCIAS.

(v) CUALQUIER CANTIDAD RECIBIDA COMO DONACION, ASISTENCIA, CONTRIBUCIONES O REGALOS DE TODO TIPO EXCEPTO SUMAS RECIBIDAS DIRECTA O INDIRECTAMENTE EN LUGAR DE IMPUESTOS RECIBIDOS DIRECTA O INDIRECTAMENTE DE CUALQUIER AGENCIA PARTICULAR, ASOCIACION, O DE CUALQUIER INDIVIDUO.

(vi) CUALQUIER CANTIDAD RECIBIDA DEL ESTADO QUE SE INCLUYA DENTRO DE LA LIMITACION DE APROPIACIONES PRESCRITA EN LA SECCION 17 DE ESTE ARTICULO.

(vii) CUALQUIER SUMA RECIBIDA DE ACUERDO CON TRASLADOS DURANTE EL AÑO FISCAL DESDE OTRA AGENCIA, DEPARTAMENTO, OFICINA, JUNTA, COMISION, AUTORIDAD, CONSEJO O INSTITUCION DE LA MISMA SUBDIVISION POLITICA QUE SE INCLUYAN COMO RENTAS LOCALES PARA DICHO AÑO FISCAL O QUE SE EXCLUYAN DE RENTAS LOCALES BAJO OTRAS DISPOSICIONES DE ESTA SECCION.

(viii) CUALQUIER CANTIDAD O PROPIEDAD ADQUIRIDA CON EL MOTIVO DE COMPRAR TERRENOS, EDIFICIOS O MEJORAMIENTOS, O DE CONSTRUIR EDIFICIOS O MEJORAMIENTOS, SI TAL ADQUISICION Y MOTIVO HAN SIDO APROBADOS POR LOS VOTANTES DE LA SUBDIVISION POLITICA.

(ix) ANY AMOUNTS RECEIVED PURSUANT TO SECTION 14 OF THIS ARTICLE WHICH ARE GREATER THAN THE AMOUNT RECEIVED IN FISCAL YEAR 1979-1980.

(x) ANY AMOUNTS RECEIVED IN RETURN FOR GOODS OR SERVICES PURSUANT TO A CONTRACT WITH ANOTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE, AND EXPENDED BY THE OTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE PURSUANT TO THE EXPENDITURE LIMITATION IN EFFECT WHEN THE AMOUNTS ARE EXPENDED BY THE OTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE.

(xi) ANY AMOUNTS EXPENDED FOR THE CONSTRUCTION, RECONSTRUCTION, OPERATION OR MAINTENANCE OF A HOSPITAL FINANCIALLY SUPPORTED BY A CITY OR TOWN PRIOR TO JANUARY 1, 1980.

(xii) ANY AMOUNTS OR PROPERTY COLLECTED TO PAY THE PRINCIPAL OF AND INTEREST ON ANY WARRANTS ISSUED BY A POLITICAL SUBDIVISION AND OUTSTANDING AS OF JULY 1, 1979.

(xiii) ANY AMOUNTS RECEIVED DURING A FISCAL YEAR AS REFUNDS, REIMBURSEMENTS OR OTHER RECOVERIES OF AMOUNTS EXPENDED WHICH WERE APPLIED AGAINST THE EXPENDITURE LIMITATION FOR SUCH FISCAL YEAR OR WHICH WERE EXCLUDED FROM LOCAL REVENUES UNDER OTHER PROVISIONS OF THIS SUBSECTION.

(xiv) ANY AMOUNTS RECEIVED COLLECTED BY THE COUNTIES FOR DISTRIBUTION TO SCHOOL DISTRICTS PURSUANT TO STATE LAW.

(e) "POLITICAL SUBDIVISION" MEANS ANY COUNTY, CITY OR TOWN. THIS DEFINITION APPLIES ONLY TO THIS SECTION AND DOES NOT OTHERWISE MODIFY THE COMMONLY ACCEPTED DEFINITION OF POLITICAL SUBDIVISION.

(f) "POPULATION" MEANS EITHER:

(i) THE PERIODIC CENSUS CONDUCTED BY THE UNITED STATES DEPARTMENT OF COMMERCE OR ITS SUCCESSOR AGENCY, OR THE ANNUAL UPDATE OF SUCH CENSUS BY THE DEPARTMENT OF ECONOMIC SECURITY OR ITS SUCCESSOR AGENCY.

(ii) A DIFFERENT MEASURE OR INDEX OF POPULATION ADOPTED AT THE DIRECTION OF THE LEGISLATURE, BY CONCURRENT RESOLUTION, UPON AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERSHIP OF EACH HOUSE OF THE LEGISLATURE. SUCH MEASURE OR INDEX SHALL APPLY FOR SUBSEQUENT FISCAL YEARS, EXCEPT IT SHALL NOT APPLY FOR THE FISCAL YEAR FOLLOWING THE ADOPTION OF SUCH MEASURE OR INDEX IF THE MEASURE OR INDEX IS ADOPTED AFTER MARCH 1 OF THE PRECEDING FISCAL YEAR.

(4) THE ECONOMIC ESTIMATES COMMISSION SHALL ADJUST THE BASE LIMIT TO REFLECT SUBSEQUENT TRANSFERS OF ALL OR ANY PART OF THE COST OF PROVIDING A GOVERNMENTAL FUNCTION, IN A MANNER PRESCRIBED BY LAW. THE ADJUSTMENT PROVIDED FOR IN THIS SUBSECTION SHALL BE USED IN DETERMINING THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION BEGINNING WITH THE FISCAL YEAR IMMEDIATELY FOLLOWING THE TRANSFER.

(5) THE ECONOMIC ESTIMATES COMMISSION SHALL ADJUST THE BASE LIMIT TO REFLECT ANY SUBSEQUENT ANNEXATION, CREATION OF A NEW POLITICAL SUBDIVISION, CONSOLIDATION OR CHANGE IN THE BOUNDARIES OF A POLITICAL SUBDIVISION, IN A MANNER PRESCRIBED BY LAW. THE ADJUSTMENT PROVIDED FOR IN THIS SUBSECTION SHALL BE USED IN DETERMINING THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION BEGINNING WITH THE FISCAL YEAR IMMEDIATELY FOLLOWING THE ANNEXATION, CREATION OF A NEW POLITICAL SUBDIVISION, CONSOLIDATION OR CHANGE IN THE BOUNDARIES OF A POLITICAL SUBDIVISION.

(6) ANY POLITICAL SUBDIVISION MAY ADJUST THE BASE LIMIT BY THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE GOVERNING BOARD OR BY INITIATIVE, IN THE MANNER PROVIDED BY LAW, AND IN EITHER INSTANCE BY APPROVAL OF THE PROPOSED ADJUSTMENT BY A MAJORITY OF THE QUALIFIED ELECTORS VOTING AT A REGULARLY SCHEDULED ELECTION FOR THE NOMINATION OR ELECTION OF THE MEMBERS OF THE GOVERNING BOARD. THE IMPACT OF THE MODIFICATION OF THE EXPENDITURE LIMITATION SHALL APPEAR ON THE BALLOT AND IN PUBLICITY PAMPHLETS, AS PROVIDED BY LAW. ANY ADJUSTMENT PURSUANT TO THIS SUBSECTION, OF THE BASE LIMIT SHALL BE USED IN

(ix) CUALQUIER CANTIDAD RECIBIDA DE ACUERDO CON LA SECCION 14 DE ESTE ARTICULO QUE SEA MAYOR QUE EL TOTAL REALIZADO DURANTE EL AÑO FISCAL 1979-80.

(x) CUALQUIER CANTIDAD RECIBIDA A CAMBIO DE BIENES O SERVICIOS DE ACUERDO CON UN CONTRATO CON OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL O CON EL ESTADO, Y GASTADA POR LA OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL O POR EL ESTADO DE ACUERDO CON LA LIMITACION DE GASTOS VIGENTE AL SER GASTADAS LAS CANTIDADES POR LA OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL, O POR EL ESTADO.

(xi) CUALQUIER SUMA GASTADA EN LA CONSTRUCCION, RECONSTRUCCION, OPERACION O MANUTENCION DE HOSPITALES APOYADOS MONETARIAMENTE POR UNA CIUDAD O PUEBLO ANTES DE ENERO 1 DE 1980.

(xii) CUALQUIER SUMA O PROPIEDAD RECAUDADA PARA PAGAR EL PRINCIPAL SOBRE GARANTIAS O CERTIFICADOS EMITIDOS POR UNA SUBDIVISION POLITICA, RECAUDABLES PARA JULIO 1 DE 1979.

(xiii) CUALQUIER CANTIDAD RECIBIDA DURANTE EL AÑO FISCAL COMO REEMBOLSO O DEVOLUCION, U OTRAS RECUPERACIONES DE SUMAS GASTADAS QUE SE HAYAN ACREDITADO A LA LIMITACION DE GASTOS PARA DICHO AÑO FISCAL O QUE SE HAYAN EXCLUIDO DE RENTAS LOCALES DE ACUERDO CON OTRAS PROVISIONES DE ESTA SUBSECCION.

(xiv) CUALQUIER CANTIDAD RECIBIDA QUE HAYA SIDO RECAUDADA POR LOS CONDADOS PARA LA DISTRIBUCION A LOS DISTRITOS ESCOLARES DE ACUERDO CON LA LEY ESTATAL.

(e) "SUBDIVISION POLITICA" SIGNIFICA CUALQUIER CONDADO, CIUDAD O PUEBLO. ESTA DEFINICION SE REFIERE SOLO A ESTA SECCION Y NO MODIFICA DE OTRO MODO LA ACEPCION USUAL DE SUBDIVISION POLITICA.

(f) LOS TERMINOS "POBLACION" Y "DEMOGRAFICO" SE REFIEREN:

(i) O AL CENSO PERIODICO REALIZADO POR EL DEPARTAMENTO DE COMERCIO DE LOS E.U., O POR LA AGENCIA QUE REEMPLACE A ESTE, O A LA ACTUALIZACION ANUAL DE DICHO CENSO POR EL DEPARTAMENTO DE SEGURIDAD ECONOMICA O POR SU AGENCIA SUCESORA.

(ii) A UNA NORMA O INDICE DIFERENTE DE POBLACION ADOPTADO POR ORDEN DE LA LEGISLATURA, POR RESOLUCION CONCURRENTE, CON EL VOTO AFIRMATIVO DE DOS TERCIOS DE LOS MIEMBROS DE CADA CAMARA LEGISLATIVA. TAL NORMA O INDICE SERA APLICABLE EN AÑOS FISCALES SUBSIGUIENTES, SOLO QUE SERA APLICABLE EN EL AÑO FISCAL SUCESIVO A LA ADOPCION DE DICHA NORMA O INDICE SI NO SE ADOPTA LA NORMA O INDICE DESPUES DE MARZO 1 DEL AÑO FISCAL ANTERIOR.

(4) LA COMISION PARA PRESUPUESTOS O PROYECCIONES ECONOMICOS AJUSTARA EL LIMITE BASICO DE MODO QUE REFLEJE TRASLADOS SUBSECUENTES DE TODO O CUALQUIER PARTE DEL COSTO DE SUMINISTRAR UNA FUNCION GUBERNAMENTAL, DE MODO PRESCRITO POR LA LEY. EL AJUSTE DISPUESTO EN ESTA SUBSECCION SERVIRA PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION A PARTIR CON EL AÑO FISCAL QUE SIGA INMEDIATAMENTE AL TRASLADO.

(5) LA COMISION PARA PROYECCIONES ECONOMICAS AJUSTARA EL LIMITE BASICO A FIN QUE ESTE REFLEJE CUALQUIER ANEXION, CREACION DE NUEVAS SUBDIVISIONES POLITICAS, CONSOLIDACION O CAMBIO DE LIMITES O LINDEROS DE UNA SUBDIVISION POLITICA, DE MANERA PRESCRITA POR LEY. EL AJUSTE QUE SE DISPONE EN ESTA SUBSECCION SERVIRA PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION, COMENZANDO CON EL AÑO FISCAL QUE SIGA INMEDIATAMENTE A LA ANEXION, CREACION DE UNA NUEVA SUBDIVISION POLITICA, CONSOLIDACION O AL CAMBIO EN LOS LIMITES O LINDEROS DE UNA SUBDIVISION POLITICA.

(6) CUALQUIER SUBDIVISION PUEDE AJUSTAR EL LIMITE BASICO MEDIANTE EL VOTO AFIRMATIVO DE DOS TERCIOS DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO O POR VOTO POPULAR, DE MANERA DISPUESTA POR LEY, Y EN UNO U OTRO CASO MEDIANTE APROBACION DEL AJUSTE PROPUESTO POR LA MAYORIA DE LOS VOTANTES APTOS QUE VOTEN EN ELECCIONES ORDINARIAS POR EL NOMBRAMIENTO O ELECCION DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO. EL IMPACTO DE LA MODIFICACION DE LA LIMITACION DE GASTOS APARECERA EN LA

DETERMINING THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION BEGINNING WITH THE FISCAL YEAR IMMEDIATELY FOLLOWING THE APPROVAL, AS PROVIDED BY LAW.

(7) THE LEGISLATURE SHALL PROVIDE FOR EXPENDITURE LIMITATIONS FOR SUCH SPECIAL DISTRICTS AS IT DEEMS NECESSARY.

(8) THE LEGISLATURE SHALL ESTABLISH BY LAW A UNIFORM REPORTING SYSTEM FOR ALL POLITICAL SUBDIVISIONS OR SPECIAL DISTRICTS SUBJECT TO AN EXPENDITURE LIMITATION PURSUANT TO THIS SECTION TO INSURE COMPLIANCE WITH THIS SECTION. THE LEGISLATURE SHALL ESTABLISH BY LAW SANCTIONS AND PENALTIES FOR FAILURE TO COMPLY WITH THIS SECTION.

(9) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO A CITY OR TOWN WHICH AT A REGULARLY SCHEDULED ELECTION FOR THE NOMINATION OR ELECTION OF MEMBERS OF THE GOVERNING BOARD OF THE CITY OR TOWN ADOPTS AN EXPENDITURE LIMITATION PURSUANT TO THIS SUBSECTION DIFFERENT FROM THE EXPENDITURE LIMITATION PRESCRIBED BY SUBSECTION (1) OF THIS SECTION. THE GOVERNING BOARD OF A CITY OR TOWN MAY BY A TWO-THIRDS VOTE PROVIDE FOR REFERRAL OF AN ALTERNATIVE EXPENDITURE LIMITATION OR THE QUALIFIED ELECTORS MAY BY INITIATIVE, IN THE MANNER PROVIDED BY LAW, PROPOSE AN ALTERNATIVE EXPENDITURE LIMITATION. IN A MANNER PROVIDED BY LAW, THE IMPACT OF THE ALTERNATIVE EXPENDITURE LIMITATION SHALL BE COMPARED TO THE IMPACT OF THE EXPENDITURE LIMITATION PRESCRIBED BY SUBSECTION (1) OF THIS SECTION, AND THE COMPARISON SHALL APPEAR ON THE BALLOT AND IN PUBLICITY PAMPHLETS. IF A MAJORITY OF THE QUALIFIED ELECTORS VOTING ON SUCH ISSUE VOTE IN FAVOR OF THE ALTERNATIVE EXPENDITURE LIMITATION, SUCH LIMITATION SHALL APPLY TO THE CITY OR TOWN. IF MORE THAN ONE ALTERNATIVE EXPENDITURE LIMITATION IS ON THE BALLOT AND MORE THAN ONE ALTERNATIVE EXPENDITURE LIMITATION IS APPROVED BY THE VOTERS, THE ALTERNATIVE EXPENDITURE LIMITATION RECEIVING THE HIGHEST NUMBER OF VOTES SHALL APPLY TO SUCH CITY OR TOWN. IF AN ALTERNATIVE EXPENDITURE LIMITATION IS ADOPTED, IT SHALL APPLY FOR THE FOUR SUCCEEDING FISCAL YEARS. FOLLOWING THE FOURTH SUCCEEDING FISCAL YEAR, THE EXPENDITURE LIMITATION PRESCRIBED BY SUBSECTION (1) OF THIS SECTION SHALL BECOME THE EXPENDITURE LIMITATION FOR THE CITY OR TOWN UNLESS AN ALTERNATIVE EXPENDITURE LIMITATION IS APPROVED AS PROVIDED IN THIS SUBSECTION. IF A MAJORITY OF THE QUALIFIED ELECTORS VOTING ON SUCH ISSUE VOTE AGAINST AN ALTERNATIVE EXPENDITURE LIMITATION, THE EXPENDITURE LIMITATION PRESCRIBED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL APPLY TO THE CITY OR TOWN, AND NO NEW ALTERNATIVE EXPENDITURE LIMITATION MAY BE SUBMITTED TO THE VOTERS FOR A PERIOD OF AT LEAST TWO YEARS. IF AN ALTERNATIVE EXPENDITURE LIMITATION IS ADOPTED PURSUANT TO THIS SUBSECTION, THE CITY OR TOWN MAY NOT CONDUCT AN OVERRIDE ELECTION PROVIDED FOR IN SECTION 19, SUBSECTION (4) OF THIS ARTICLE, DURING THE TIME PERIOD IN WHICH THE ALTERNATIVE EXPENDITURE LIMITATION IS IN EFFECT.

(10) THIS SECTION DOES NOT APPLY TO ANY POLITICAL SUBDIVISION UNTIL THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FIRST REGULARLY SCHEDULED ELECTION AFTER JULY 1, 1980 FOR THE NOMINATION OR ELECTION OF THE MEMBERS OF THE GOVERNING BOARD OF SUCH POLITICAL SUBDIVISION, EXCEPT THAT A POLITICAL SUBDIVISION, PRIOR TO THE FISCAL YEAR DURING WHICH THE SPENDING LIMITATION WOULD FIRST BECOME EFFECTIVE, MAY MODIFY THE EXPENDITURE LIMITATION PRESCRIBED PURSUANT TO SUBSECTION (1) OF THIS SECTION, BY THE PROVISIONS PRESCRIBED BY SUBSECTIONS (2) AND (6) OF THIS SECTION, OR MAY ADOPT AN ALTERNATIVE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (9) OF THIS SECTION.

A COUNTY MAY CONDUCT A SPECIAL ELECTION TO EXCEED THE EXPENDITURE LIMITATION PRESCRIBED PURSUANT TO SUBSECTION (1) OF THIS SECTION FOR THE FISCAL YEARS 1982-1983 AND 1983-1984, ON THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER IN 1981.

(11) "CITY", AS USED IN THIS ARTICLE, MEANS CITY OR CHARTER CITY.

BOLETA Y EN FOLLETOS PUBLICITARIOS, SEGUN DISPONE LA LEY. CONFORME CON ESTA SUBSECCION, CUALQUIER AJUSTE DEL LIMITE BASICO SERVIRA PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION, COMENZANDO CON EL AÑO FISCAL QUE SIGA INMEDIATAMENTE A LA APROBACION, COMO LA LEY DISPONE.

(7) LA LEGISLATURA DISPONDRA LAS LIMITACIONES DE GASTOS PARA TALES DISTRITOS ESPECIALES QUE ESTIME NECESARIAS.

(8) LA LEGISLATURA ESTABLECERA POR LEY UN SISTEMA UNIFORME DE DECLARACION PARA TODAS LAS SUBDIVISIONES POLITICAS O DISTRITOS ESPECIALES SUJETOS A UNA LIMITACION DE GASTOS DE ACUERDO CON ESTA SECCION, A FIN DE ASEGURAR EL CUMPLIMIENTO CON ESTA SECCION. LA LEGISLATURA ESTABLECERA POR LEY SANCIONES Y CASTIGOS POR EL NO CUMPLIMIENTO CON ESTA SECCION.

(9) LA SUBSECCION (1) DE ESTA SECCION NO ES APLICABLE A CIUDADES O PUEBLOS QUE EN ELECCIONES ORDINARIAS PARA EL NOMBRAMIENTO O ELECCION DE MIEMBROS DEL CONSEJO ADMINISTRATIVO DE UNA CIUDAD O PUEBLO ADOPTEN UNA LIMITACION DE GASTOS PRESCRITA POR LA SUBSECCION (1) DE ESTA SECCION. EL CONSEJO ADMINISTRATIVO DE UNA CIUDAD O PUEBLO PUEDE, MEDIANTE VOTO DE DOS TERCIOS, RECOMENDAR UNA LIMITACION ALTERNATIVA DE GASTOS, O LOS VOTANTES APTOS PUEDEN TOMAR LA INICIATIVA, DE LA MANERA PROVISTA POR LEY, PROPONIENDO UNA LIMITACION DE GASTOS ALTERNATIVA. DE MANERA DISPUESTA POR LEY, SE COMPARARA EL IMPACTO DE LA LIMITACION DE GASTOS CON EL IMPACTO DE LA LIMITACION DE GASTOS PRESCRITA POR LA SUBSECCION (1) DE ESTA SECCION, Y LA COMPARACION APARECERA EN LA BOLETA Y EN LOS FOLLETOS DE PUBLICIDAD. SI LA MAYORIA DE LOS VOTANTES APTOS QUE VOTEN SOBRE ESTE ASUNTO VOTAN A FAVOR DE LA LIMITACION DE GASTOS ALTERNATIVA, DICHA LIMITACION SERA APLICABLE A LA CIUDAD O PUEBLO. SI APARECE EN LA BOLETA MAS DE UNA LIMITACION DE GASTOS ALTERNATIVA Y SI QUEDA APROBADA MAS DE UNA LIMITACION DE GASTOS ALTERNATIVA POR LOS VOTANTES, LA LIMITACION DE GASTOS ALTERNATIVA QUE RECIBA MAS VOTOS SERA APLICABLE A LA CIUDAD O PUEBLO.

SI SE ADOPTA UNA LIMITACION DE GASTOS ALTERNATIVA, SERA APLICABLE PARA LOS SIGUIENTES CUATRO AÑOS FISCALES. AL CUATRO AÑO FISCAL SUCESIVO, LA LIMITACION DE GASTOS PRESCRITA POR LA SUBSECCION (1) DE ESTA SECCION SE CONVERTIRA EN LA LIMITACION DE GASTOS PARA LA CIUDAD O PUEBLO A MENOS QUE UNA LIMITACION DE GASTOS ALTERNATIVA SEA APROBADA SEGUN SE DISPONE EN ESTA SUBSECCION. SI LA MAYORIA DE LOS VOTANTES APTOS QUE VOTEN SOBRE DICHO ASUNTO VOTAN EN CONTRA DE UNA LIMITACION DE GASTOS ALTERNATIVA, LA LIMITACION DE GASTOS PRESCRITA DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION TENDRA APLICACION A LA CIUDAD O PUEBLO, Y NINGUNA LIMITACION DE GASTOS NUEVA PODRA PRESENTARSE A LOS VOTANTES POR UN PERIODO DE POR LO MENOS DOS AÑOS. SI SE ADOPTA UNA LIMITACION DE GASTOS ALTERNATIVA DE ACUERDO CON ESTA SUBSECCION, LA CIUDAD O PUEBLO NO PODRA TENER ELECCIONES CONTRARRESTANTES O DE ANULACION DE ACUERDO CON LA SECCION 19, SUBSECCION (4) DE ESTE ARTICULO, DURANTE EL PERIODO EN QUE RIGE LA LIMITACION DE GASTOS.

(10) NO SE REFIERE ESTA SECCION A NINGUNA SUBDIVISION POLITICA HASTA EL AÑO FISCAL QUE SIGA INMEDIATAMENTE A LA PRIMERA ELECCION ORDINARIA DESPUES DEL 1 DE JULIO DE 1980 PARA LE NOMBRAMIENTO O ELECCION DE LOS MIEMBROS DEL CONSEJO ADMINISTRATIVO DE DICHA SUBDIVISION POLITICA, SALVO QUE UNA SUBDIVISION POLITICA, ANTES DEL AÑO FISCAL DURANTE EL CUAL LA LIMITACION DE GASTOS PRIMERO ENTRARIA EN VIGOR, PODRA MODIFICAR LA LIMITACION DE GASTOS PRESCRITA DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION, BAJO LAS DISPOSICIONES PRESCRITAS POR LAS SUBSECCIONES (2) Y (6) DE ESTA SECCION, O PODRA ADOPTAR UNA LIMITACION DE GASTOS ALTERNATIVA DE ACUERDO CON LA SUBSECCION (9) DE ESTA SECCION.

UN CONDADO PODRA TENER UNA ELECCION ESPECIAL A FIN DE EXCEDER LA LIMITACION DE GASTOS PRESCRITA DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION PARA LOS AÑOS FISCALES 1982-1983 Y 1983-1984, EL PRIMER MARTES DESPUES DEL PRIMER LUNES EN NOVIEMBRE DE 1981.

(11) SE USA EL TERMINO "CIUDAD" EN ESTE ARTICULO CON EL SENTIDO DE CIUDAD O CIUDAD CONSTITUIDA.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. 19-124)

Proposition 108 would amend the Arizona Constitution to limit expenditures of counties, cities and towns. Each county, city or town could only expend the same amount of "local revenues" as it expended in fiscal year 1979-1980, adjusted to reflect:

1. Population changes.
2. Cost of living changes.
3. Cost transferring of government programs to or from a county, city or town.
4. Annexation or other change in boundary or creation of a new county, city or town.

The definition of "local revenues" would detail which revenues are subject to the expenditure limitation. "Cost of living" and "population" are defined, but different indexes of the cost of living and of population could be adopted by concurrent resolution of the Legislature by a two-thirds vote of the members of both houses. Such resolution does not require approval by the Governor and is not subject to referendum by the people.

Expenditures in excess of the limitation would be allowed only in the following cases:

1. If the Governor declares a disaster or emergency, the governing board of a county, city or town could by a vote of two-thirds of its members authorize expenditures exceeding the limitation in the same or the succeeding fiscal year. After the emergency monies are spent, the normal expenditure limitation would apply.

2. In case of an emergency or disaster not declared by the Governor, the governing board of a county, city or town could by a vote of 70% of its members authorize excess expenditures if either:

a) Expenditures are reduced below the normal limit in the next fiscal year by the amount of the excess expenditure.

b) The voters approve the excess expenditure.

In either case, the authorized excess expenditures could be spent in the fiscal year of the emergency or the next fiscal year. After the emergency monies are spent, the normal expenditure limitation would apply.

3. Upon a vote of two-thirds of the governing board of a county, city or town and approval by the voters. The approval would be for a specific amount of money to be spent in the next fiscal year. After the excess monies are spent, the normal expenditure limitation would apply.

The base of the expenditure limit could be permanently adjusted by a vote of two-thirds of the governing board of a county, city or town and a ratifying vote of the people or by an election upon an initiative.

A city or town could adopt an alternative expenditure limitation for four years by a vote of two-thirds of the city or town council and a ratifying vote of the people or by an election upon an initiative. The impact of the proposed alternative expenditure limitation would be explained in publicity pamphlets distributed prior to the election. After four years, the normal expenditure limitation would apply unless another alternative expenditure limitation were adopted for another four years. If an alternative expenditure limitation had been adopted, tax levies in excess of the levy limitation could not be authorized.

If an alternative expenditure limitation were rejected at an election, another election on this issue could not be held for two years. If an alternative expenditure limit is adopted at an election, an override election may not be held during the period such limitation is in effect.

Special districts would not be subject to the constitutional expenditure limitation, but the Legislature could prescribe such a limitation by law. The Legislature would also be required to provide for uniform reporting to assure compliance with the expenditure limitation requirements and to provide sanctions and penalties for failure to comply.

The expenditure limitations would not take effect until after the next election for governing board members.

ANALISIS POR EL CONSEJO LEGISLATIVO

(En conformidad con A.R.S. 19-124)

La Proposición 108 enmendaría la Constitución de Arizona a fin de limitar los gastos de condados, ciudades y pueblos. Cada condado, ciudad o pueblo sólo podría gastar la misma cantidad de "rentas locales" como la que gastó en el año fiscal 1979-1980, con ajustes que reflejen:

1. cambios demográficos;

2. cambios en el costo de la vida;

3. traslados de costos de programas gubernamentales hasta condados, ciudades o pueblos y desde ellos;

4. anexiones y otros cambios de lindero o la creación de pueblos nuevos.

La definición de "rentas locales" especificaría cuáles rentas estén sujetas a la limitación de gastos. "Costo de vida" y "población" o "demográfico" están definidos, pero se podrían adoptar índices diferentes del costo de la vida y población por resolución concurrente de la legislatura mediante voto de dos tercios de los miembros de ambas cámaras. Dicha resolución no requiere la aprobación del gobernador y no está sujeta al referéndum popular.

Se permitirían gastos en exceso de la limitación sólo en los siguientes casos:

1. Si el gobernador declara un desastre o emergencia, el consejo administrativo del condado, ciudad o pueblo podría mediante voto de dos tercios de sus miembros, autorizar gastos en exceso de la limitación durante el mismo año fiscal o el sucesivo. Después de gastarse los dineros de emergencia, se aplicaría la limitación de gastos normal.

2. En caso de emergencias o desastres no declarados por el gobernador, el consejo administrativo del condado, ciudad o pueblo podría, mediante voto de 70% de sus miembros, autorizar excesos en los gastos, si:

a) se reducen para el año siguiente fiscal los gastos bajo el límite normal en proporción al exceso de gastos.

b) o si los votantes aprueban el exceso de gastos. En cualquier caso, los gastos extras autorizados podrían gastarse durante el año fiscal correspondiente a la emergencia, o en el siguiente. Después de gastarse los dineros de emergencia, se aplicaría la limitación de gastos normal.

3. Mediante voto de dos tercios del consejo administrativo de condados, ciudades o pueblos y aprobación por los votantes. La aprobación sería para una cantidad de dinero específica a gastarse en el siguiente año fiscal. Después de gastarse la cantidad de dinero extra, se aplicaría la limitación de gastos normal.

Se podría ajustar permanentemente el límite básico para gastos por voto de dos tercios del consejo administrativo del condado, ciudad o pueblo y voto de confirmación popular, o mediante elección popular.

Podriá adoptar una ciudad o pueblo una limitación de gastos alternativa para cuatro años mediante voto de dos tercios del consejo municipal o del pueblo, y voto de confirmación popular, o mediante elección popular. El impacto de la propuesta limitación de gastos alternativa se explicaría en folletos publicitarios que se distribuyeran antes de la elección. A los cuatro años, la limitación de gastos normal tendría aplicación a menos que otra limitación de gastos alternativa se adoptara para otros cuatro años. Si se hubiera adoptado una limitación de gastos alternativa, no se podrían autorizar las tasaciones en exceso de la limitación.

Si en una elección se rechazara una limitación de gastos alternativa, no se podría tener otra elección sobre este asunto por dos años. Si se adopta por elección un límite de gastos alternativo, no se puede tener elección de anulación durante el período vigente de dicho límite.

No estarían sujetos a la limitación de gastos constitucional los distritos especiales, pero la legislatura podría prescribir por ley tal limitación. También le tocaría a la legislatura proveer la uniformidad de declaraciones a fin de asegurar cumplimiento con los requisitos de la limitación de gastos y disponer sanciones y castigos por falta de cumplimiento.

No entrarían en vigor las limitaciones de gastos hasta después de la próxima elección para miembros de los consejos administrativos.

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 108

Expenditures of counties, cities and towns must be limited to control rampant inflation and avoid excessive dependence on government. This proposition would for the first time terminate government's blank check drawn on people's earnings. Expected growth in population and changes in the cost of living are justifiable factors for allowing spending to increase other than as an arbitrary percentage.

Under our present system there is no incentive for local governments to control spending. It is a simple matter to convince our governing bodies to fund a new program or expand existing programs without public consent. There is tremendous and continuous pressure from the bureaucrats, as well as from special interest groups, to increase the burden on the taxpayers of this state.

Lack of an effective limitation on local spending has resulted in dramatic increases in budgets which are responsible for the ever-increasing local tax burden. This burden has increased substantially in the 1970's and will continue to increase in the 1980's if Proposition 108 fails.

Proposition 108 would accommodate a reasonable growth in county, city or town expenditures caused by factors beyond the control of local government. This would protect basic services and at the same time control excessive spending.

Proposition 108 is not unduly restrictive in that it would allow for expenditures in excess of the limitation if there is an emergency or disaster. In addition, voters could approve excess expenditures. Such approval would have to come from an extraordinary majority. This assures that excess expenditures could be authorized when the need is strong or obvious. Under Proposition 108 the final decision to increase government expenditures would be with the people.

State and local government spending has increased 250% from 1970 to 1979 or an annual increase of almost 11% throughout the 1970's. The dramatic increase in expenditures is a result of each budget decision being made separately from other budget decisions. This proposition places a ceiling on total spending. Therefore local govenment bodies must establish budget priorities, thereby controlling expenditures.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 108

Proposition 108 suggests that the complex fiscal needs of counties, cities and towns and our government in general can be addressed by a mathematical formula. It assumes there is a precise method to control the problems of those entities and guide their fiscal affairs for years ahead, an assumption that is unsupported.

Local governments may view the constitutional spending ceiling as a target, rather than as a maximum level, and budget for more than is actually needed to reach that target.

Proposition 108 is promoted as part of a "taxpayers' revolt". Actually, it will have little effect on taxation by the counties, cities and towns. It fails to treat special districts in an identical manner in that their limitations may be provided for in statute and not written into the Constitution.

This proposition may result in drastic cuts in crucial county, city and town services to comply with an arbitrary mathematical formula.

Proposition 108 would merely add to a burgeoning and costly state bureaucracy by requiring the state to adjust the payments of revenues by counties, cities and towns to reflect population and cost of living changes each year before the local government could adopt a budget and spend its revenues.

The local governments have consistently been more responsive to their constituency than the state has. This proposition, in establishing arbitrary limitations, would only enable the state to encroach upon the rights of those communities to handle their own problems.

Other propositions submitted in this election proposing amendments to article IX, Constitution of Arizona, would significantly limit the taxing authority of the counties, cities and towns. The additional expenditure limitations of Proposition 108 would unduly restrict their fiscal operations and result in overkill.

ARGUMENTOS DEL CONSEJO LEGISLATIVO A FAVOR DE LA PROPOSICION 108

Los gastos de los condados, ciudades y pueblos deberían limitarse para controlar la creciente inflación y evitar que se dependa excesivamente del gobierno. Esta proposición pondría fin, por primera vez, al cheque en blanco que el gobierno tiene girado sobre los sueldos de la gente. El crecimiento demográfico y cambios en el costo de la vida, proyectados, son factores que justifican más el aumento de gastos, que no un porcentaje arbitrario.

Bajo el sistema actual, no existe incentivo para gobiernos locales para controlar gastos. Resulta muy fácil convencer a las agencias gubernamentales de la necesidad de sacar fondos para un nuevo programa o amplificar programa existentes, sin pedirle permiso al público. Existe, de parte de burocratas tanto como de grupos de intereses especiales, una presión enorme y continua por aumentar la obligación tributaria sobre los pagadores de impuestos de este estado.

La falta de una limitación efectiva sobre gastos locales ha resultado en aumentos dramáticos en los presupuestos que son los responsables de la carga tributaria local, siempre en aumento. Dicha carga ha aumentado considerablemente en los 1970 y seguirá aumentando en los 1980 si no se aprueba la Proposición 108.

La Proposición 108 aceptaría o se conformaría a una proporción de crecimiento razonable en los gastos de condados, ciudades o pueblos ocasionados por factores que no pueda controlar el gobierno local. Esto protegería servicios básicos a la vez que controle gastos excesivos.

La Proposición 108 no es indebidamente restrictiva ya que permitiría gastos en exceso de la limitación en casos de emergencia o desastre. Además, los votantes podrían aprobar excesos de gastos. Esta aprobación provendría de una preponderante mayoría. Esto asegura la posibilidad de autorizar gastos extras cuando la necesidad es fuerte o evidente. Bajo Proposición 108, la decisión final de aumentar gastos gubernamentales quedaría con la gente.

Los gastos gubernamentales, locales y estatales, han aumentado en 250% desde 1970 hasta 1979, o sea un aumento anual de casi 11% durante los 1970. El sorprendente aumento en los gastos es un resultado de hacer cada decisión presupuestaria independientemente de otras decisiones presupuestarias. Esta proposición pone un límite máximo sobre la totalidad de los gastos. Por lo tanto, los cuerpos de gobierno local deben establecer prioridades presupuestarias, controlando con ello los gastos.

ARGUMENTOS DEL CONSEJO LEGISLATIVO EN CONTRA DE LA PROPOSICION 108

La Proposición 108 sugiere que las complicadas necesidades fiscales de los condados, ciudades y pueblos, y de nuestro gobierno en general, pueden afrontarse por medio de una fórmula matemática. Asume que existe un método exacto para contolar los problemas de dichas entidades y de orientar sus asuntos fiscales para años en adelante, suposición que carece de apoyo.

Puede ser que los gobiernos locales vean el límite constitucional sobre los gastos como una meta, más bien que como nivel máximo, y que presupuesten para más de lo que realmente se necesite para alcanzar esa meta.

Se promueve la Proposicion 108 como parte de una "rebelión de pagadores de impuestos". En realidad, surtirá poco efecto en la tasación por los condados, ciudades y pueblos. Omite tratar a los distritos especiales de manera idéntica, ya que sus limitaciones pueden ser provistas por estatuto y no mediante introducción por escrito en la Constitución.

Puede resultar esta proposición en rebajas extremas en servicios importantes para condados, ciudades y pueblos a fin de conformar con una fórmula matemática arbitraria.

La Proposición 108 no haría sino aumentar una burocracia estatal, creciente y costosa, con el requisito de que el estado ajustara las rentas pagadas por los condados, ciudades y pueblos con el fin de reflejar cambios de población y costo de vida, cada año, antes de que el gobierno local pudiera adoptar un presupuesto y gastar sus rentas.

Los gobiernos locales han sido, por tradición, más responsables para sus electores que el estado. Esta propocisión, al establecer limitaciones arbitrarias, solo permitiría al estado infringir los derechos de aquellas comunidades de resolver sus propios problemas.

Otras proposiciones presentadas en esta elección, que proponen enmiendas al artículo IX, Constitución de Arizona, limitarían seriamente la autoridad tributaria de los condados, ciudades y pueblos. La limitación de gastos adicionales de la Proposición 108 limitaría indebidamente sus operaciones fiscales y resultaría en sobrecompensación.

PROPOSITION 109
TEXT OF PROPOSED AMENDMENT

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

10. The following amendment of article IX, Constitution of Arizona, by adding section 21, is proposed as one ballot proposition to become valid when approved by a majority of the qualified electors voting thereon and upon proclamation of the governor.

21. Expenditure limitation; school districts and community college districts; adjustments; reporting

SECTION 21. (1) THE ECONOMIC ESTIMATES COMMISSION SHALL DETERMINE AND PUBLISH PRIOR TO APRIL 1 OF EACH YEAR THE EXPENDITURE LIMITATION FOR THE FOLLOWING FISCAL YEAR FOR EACH COMMUNITY COLLEGE DISTRICT. THE EXPENDITURE LIMITATIONS SHALL BE DETERMINED BY ADJUSTING THE AMOUNT OF EXPENDITURES OF LOCAL REVENUES FOR EACH SUCH DISTRICT FOR FISCAL YEAR 1979-1980 TO REFLECT THE CHANGES IN THE STUDENT POPULATION OF EACH DISTRICT AND THE COST OF LIVING. THE GOVERNING BOARD OF ANY COMMUNITY COLLEGE DISTRICT SHALL NOT AUTHORIZE EXPENDITURES OF LOCAL REVENUES IN EXCESS OF THE LIMITATION PRESCRIBED IN THIS SECTION, EXCEPT IN THE MANNER PROVIDED BY LAW.

(2) THE ECONOMIC ESTIMATES COMMISSION SHALL DETERMINE AND PUBLISH PRIOR TO MAY 1 OF EACH YEAR THE AGGREGATE EXPENDITURE LIMITATION FOR ALL SCHOOL DISTRICTS FOR THE FOLLOWING FISCAL YEAR. THE AGGREGATE EXPENDITURE LIMITATION SHALL BE DETERMINED BY ADJUSTING THE TOTAL AMOUNT OF EXPENDITURES OF LOCAL REVENUES FOR ALL SCHOOL DISTRICTS FOR FISCAL YEAR 1979-1980 TO REFLECT THE CHANGES IN STUDENT POPULATION IN THE SCHOOL DISTRICTS AND THE COST OF LIVING. THE AGGREGATE EXPENDITURES OF LOCAL REVENUES FOR ALL SCHOOL DISTRICTS SHALL NOT EXCEED THE LIMITATION PRESCRIBED IN THIS SECTION, EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION.

(3) EXPENDITURES IN EXCESS OF THE LIMITATION DETERMINED PURSUANT TO SUBSECTION (2) OF THIS SECTION MAY BE AUTHORIZED FOR A SINGLE FISCAL YEAR UPON AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERSHIP OF EACH HOUSE OF THE LEGISLATURE.

(4) AS USED IN THIS SECTION:

(a) "COST OF LIVING" MEANS EITHER:

(i) THE PRICE OF GOODS AND SERVICES AS MEASURED BY THE IMPLICIT PRICE DEFLATOR FOR THE GROSS NATIONAL PRODUCT OR ITS SUCCESSOR AS REPORTED BY THE UNITED STATES DEPARTMENT OF COMMERCE, OR ITS SUCCESSOR AGENCY.

(ii) A DIFFERENT MEASURE OR INDEX OF THE COST OF LIVING ADOPTED AT THE DIRECTION OF THE LEGISLATURE, BY CONCURRENT RESOLUTION, UPON AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERSHIP OF EACH HOUSE OF THE LEGISLATURE. SUCH MEASURE OR INDEX SHALL APPLY FOR SUBSEQUENT FISCAL YEARS, EXCEPT IT SHALL NOT APPLY FOR THE FISCAL YEAR FOLLOWING THE ADOPTION OF SUCH MEASURE OR INDEX IF THE MEASURE OR INDEX IS ADOPTED AFTER MARCH 1 OF THE PRECEDING FISCAL YEAR.

(b) "EXPENDITURE" MEANS ANY AMOUNTS BUDGETED TO BE PAID FROM LOCAL REVENUES AS PRESCRIBED BY LAW.

(c) "LOCAL REVENUES" INCLUDES ALL MONIES, REVENUES, FUNDS, PROPERTY AND RECEIPTS OF ANY KIND WHATSOEVER RECEIVED BY OR FOR THE ACCOUNT OF A SCHOOL OR COMMUNITY COLLEGE DISTRICT OR ANY OF ITS AGENCIES, DEPARTMENTS, OFFICES, BOARDS, COMMISSIONS, AUTHORITIES, COUNCILS AND INSTITUTIONS, EXCEPT:

(i) ANY AMOUNTS OR PROPERTY RECEIVED FROM THE ISSUANCE OR INCURRENCE OF BONDS, OR OTHER LAWFUL LONG-TERM OBLIGATIONS ISSUED OR INCURRED FOR A SPECIFIC PRUPOSE, OR ANY AMOUNTS OR PROPERTY COLLECTED OR SEGREGATED TO MAKE PAYMENTS OR DEPOSITS REQUIRED BY A CONTRACT CONCERNING SUCH BONDS OR OBLIGATIONS.

PROPOSICION 109

TEXTO DE LA ENMIENDA PROPUESTA

Que se resuelva por el Senado del Estado de Arizona, con el acuerdo de la Cámara de Representantes:

10. La siguiente enmienda de Artículo IX, Constitución de Arizona, agregándole la sección 21, se propone como una proposición de boleta que entrará en vigor al ser aprobada por una mayoría de los votantes aptos que la voten y al ser proclamada por el gobernador.

21. Limitación de gastos; distritos escolares y distritos de colegio comunal; ajustes; declaraciones

SECCION 21. (1) LA COMISION DE PROYECCIONES ECONOMICAS DETERMINARA Y PUBLICARA ANTES DE ABRIL 1 DE CADA AÑO LA LIMITACION DE GASTOS PARA EL SIGUIENTE AÑO FISCAL PARA CADA DISTRITO DE COLEGIO COMUNAL. LA LIMITACION DE GASTOS SERA DETERMINADA MEDIANTE EL AJUSTE DE LOS GASTOS DE LAS RENTAS LOCALES PARA CADA UNO DE ESTOS DISTRITOS PARA EL AÑO FISCAL 1979-1980 A FIN DE REFLEJAR LOS CAMBIOS EN LA POBLACION ESTUDIANTIL DE CADA DISTRITO Y LOS COSTOS DE LA VIDA. NINGUN CONSEJO ADMINISTRATIVO DE COLEGIO COMUNAL PODRA AUTORIZAR GASTOS DE RENTAS LOCALES EN EXCESO DE LA LIMITACION PRESCRITA EN ESTA SECCION, EXCEPTO DE MANERA DISPUESTA POR LA LEY.

(2) LA COMISION DE PROYECCIONES ECONOMICAS DETERMINARA Y PUBLICARA ANTES DE MAYO 1 DE CADA AÑO LA LIMITACION DE GASTOS EN SU TOTALIDAD PARA TODOS LOS DISTRITOS ESCOLARES PARA EL SIGUIENTE AÑO FISCAL. LA LIMITACION DE GASTOS TOTAL SERA DETERMINADA MEDIANTE EL AJUSTE DE LA CANTIDAD TOTAL DEL GASTO DE LAS RENTAS LOCALES PARA TODOS LOS DISTRITOS ESCOLARES PARA EL AÑO FISCAL 1979-1980 A FIN DE REFLEJAR LOS CAMBIOS EN LA POBLACION ESTUDIANTIL EN LOS DISTRITOS ESCOLARES Y EN LOS COSTOS DE LA VIDA. LOS GASTOS DE RENTAS LOCALES EN SU TOTALIDAD, PARA TODOS LOS DISTRITOS ESCOLARES, NO DEBERAN EXCEDER LA LIMITACION PRESCRITA EN ESTA SECCION, SALVO COMO QUEDA DISPUESTO EN LA SUBSECCION (3) DE ESTA SECCION.

(3) LOS GASTOS EN EXCESO DE LA LIMITACION DETERMINADA DE ACUERDO CON LA SUBSECCION (2) DE ESTA SECCION PODRA AUTORIZARSE PARA UN SOLO AÑO FISCAL CON EL VOTO AFIRMATIVO DE DOS TERCIOS DE LOS MIEMBROS DE CADA CAMARA DE LA LEGISLATURA.

(4) SEGUN EL USO DE ESTA SECCION:

(a) "COSTOS DE VIDA" SIGNIFICA:

(i) O EL PRECIO DE BIENES Y SERVICIOS SEGUN MEDIDOS POR EL REDUCTOR IMPLICITO DE PRECIOS ("IMPLICIT PRICE DEFLATOR") PARA LA PRODUCCION BRUTA NACIONAL ("GROSS NATIONAL PRODUCT"), O EL SISTEMA CONTABLE QUE LA REEMPLACE SEGUN INFORMACION DEL DEPARTAMENTO DE COMERCIO DE LOS E.U. O LA AGENCIA QUE LO REEMPLACE.

(ii) UNA NORMA O INDICE DIFERENTE DEL COSTO DE LA VIDA ADOPTADO POR ORDEN DE LA LEGISLATURA, POR RESOLUCION CONCURRENTE, CON EL VOTO AFIRMATIVO DE DOS TERCIOS DE LOS MIEMBROS DE CADA CAMARA LEGISLATIVA. DICHA NORMA O INDICE SERA APLICABLE PARA AÑOS FISCALES SUBSECUENTES A LA ADOPCION DE LA NORMA O INDICE SIEMPRE QUE SE ADOPTE LA NORMA O INDICE DESPUES DE MARZO 1 DEL AÑO FISCAL ANTERIOR.

(b) "GASTO" SIGNIFICA CUALQUIER CANTIDAD PRESUPUESTADA PARA PAGARSE DE RENTAS LOCALES SEGUN PRESCRIBE LA LEY.

(c) "RENTAS O REDITOS LOCALES" INCLUYEN TODO DINERO, RENTA O REDITOS, FONDOS, CUOTAS, MULTAS, SANCIONES, DERECHOS DE MATRICULA, PROPIEDAD Y RECIBOS DE CUALQUIER TIPO QUE SEAN RECIBIDOS POR UNA SUBDIVISION POLITICA O A FAVOR DE ELLA O POR CUALQUIERA DE SUS AGENCIAS, DEPARTAMENTOS, OFICINAS, JUNTAS, COMISIONES, AUTORIDADES, CONSEJOS E INSTITUCIONES, O A FAVOR DE ESTOS MISMOS, CON LA EXCEPTION DE:

(i) CUALQUIER CANTIDAD O PROPIEDAD RECIBIDA COMO RESULTADO DE LA EMISION O CONTRACCION DE BONOS U OTRAS OBLIGACIONES A LARGO PLAZO EMITIDAS O CONTRAIDAS POR MOTIVO ESPECIFICO, O RECAUDADAS O SEPARADAS PARA HACER PAGOS O DEPOSITOS EXIGIDOS POR UN CONTRATO RELATIVO A DICHOS BONOS U OBLIGACIONES.

FOR THE PURPOSE OF THIS SUBDIVISION LONG-TERM OBLIGATIONS SHALL NOT INCLUDE WARRANTS ISSUED IN THE ORDINARY COURSE OF OPERATION OR REGISTERED FOR PAYMENT, BY A POLITICAL SUBDIVISION.

(ii) ANY AMOUNTS OR PROPERTY RECEIVED AS PAYMENT OF DIVIDENDS AND INTEREST, OR ANY GAIN ON THE SALE OR REDEMPTION OF INVESTMENT SECURITIES, THE PURCHASE OF WHICH IS AUTHORIZED BY LAW.

(iii) ANY AMOUNTS OR PROPERTY RECEIVED BY A SCHOOL OR COMMUNITY COLLEGE DISTRICT IN THE CAPACITY OF TRUSTEE, CUSTODIAN OR AGENT.

(iv) ANY AMOUNTS RECEIVED AS GRANTS AND AID OF ANY TYPE RECEIVED FROM THE FEDERAL GOVERNMENT OR ANY OF ITS AGENCIES EXCEPT SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS.

(v) ANY AMOUNTS OR PROPERTY RECEIVED AS GRANTS, GIFTS, AID OR CONTRIBUTIONS OF ANY TYPE EXCEPT AMOUNTS RECEIVED DIRECTLY OR INDIRECTLY IN LIEU OF TAXES RECEIVED DIRECTLY OR INDIRECTLY FROM ANY PRIVATE AGAINCY OR ORGANIZATION, OR ANY INDIVIDUAL.

(vi) ANY AMOUNTS RECEIVED FROM THE STATE FOR THE PURPOSE OF PURCHASING LAND, BUILDINGS OR IMPROVEMENTS OR CONSTRUCTING BUILDINGS OR IMPROVEMENTS.

(vii) ANY AMOUNTS RECEIVED PURSUANT TO A TRANSFER DURING A FISCAL YEAR FROM ANOTHER AGENCY, DEPARTMENT, OFFICE, BOARD, COMMISSION, AUTHORITY, COUNCIL OR INSTITUTION OF THE SAME COMMUNITY COLLEGE OR SCHOOL DISTRICT WHICH WERE INCLUDED AS LOCAL REVENUES FOR SUCH FISCAL YEAR OR WHICH ARE EXCLUDED FROM LOCAL REVENUE UNDER OTHER PROVISIONS OF THIS SUBSECTION.

(viii) ANY AMOUNTS OR PROPERTY ACCUMULATED BY A COMMUNITY COLLEGE DISTRICT FOR THE PURPOSE OF PURCHASING LAND, BUILDINGS OR IMPROVEMENTS OR CONSTRUCTING BUILDINGS OR IMPROVEMENTS.

(ix) ANY AMOUNTS RECEIVED IN RETURN FOR GOODS OR SERVICES PURSUANT TO A CONTRACT WITH ANOTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE AND EXPENDED BY THE OTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE PURSUANT TO THE EXPENDITURE LIMITATION IN EFFECT WHEN THE AMOUNTS ARE EXPENDED BY THE OTHER POLITICAL SUBDIVISION, SCHOOL DISTRICT, COMMUNITY COLLEGE DISTRICT OR THE STATE.

(x) ANY AMOUNTS RECEIVED AS TUITION OR FEES DIRECTLY OR INDIRECTLY FROM ANY PUBLIC OR PRIVATE AGENCY OR ORGANIZATION OR ANY INDIVIDUAL.

(xi) ANY AD VALOREM TAXES RECEIVED PURSUANT TO AN ELECTION TO EXCEED THE LIMITATION PRESCRIBED BY SECTION 19 OF THIS ARTICLE OR FOR THE PURPOSES OF FUNDING EXPENDITURES IN EXCESS OF THE EXPENDITURE LIMITATIONS PRESCRIBED BY SUBSECTION (7) OF THIS SECTION.

(xii) ANY AMOUNTS RECEIVED DURING A FISCAL YEAR AS REFUNDS, REIMBURSEMENTS OR OTHER RECOVERIES OF AMOUNTS EXPENDED WHICH WERE APPLIED AGAINST THE EXPENDITURE LIMITATION FOR SUCH FISCAL YEAR OR WHICH WERE EXCLUDED FROM LOCAL REVENUES UNDER OTHER PROVISIONS OF THIS SUBSECTION.

(d) FOR THE PURPOSE OF SUBSECTION (2) OF THIS SECTION, THE FOLLOWING ITEMS ARE ALSO EXCLUDED FROM LOCAL REVENUES:

(i) ANY AMOUNTS RECEIVED AS THE PROCEEDS FROM THE SALE, LEASE OR RENTAL OF SCHOOL PROPERTY AS AUTHORIZED BY LAW.

(ii) ANY AMOUNTS RECEIVED FROM THE CAPITAL LEVY AS AUTHORIZED BY LAW.

(iii) ANY AMOUNTS RECEIVED FROM THE ACQUISITION, OPERATION, OR MAINTENANCE OF SCHOOL SERVICES OF A COMMERCIAL NATURE WHICH ARE ENTIRELY OR PREDOMINANTLY SELF-SUPPORTING.

(iv) ANY AMOUNTS RECEIVED FOR THE PURPOSE OF FUNDING EXPENDITURES AUTHORIZED IN THE EVENT OF DESTRUCTION OF OR DAMAGE TO THE FACILITIES OF A SCHOOL DISTRICT AS AUTHORIZED BY LAW.

PARA LOS PROPOSITOS DE ESTA SUBDIVISION LAS OBLIGACIONES A LARGO PLAZO NO INCLUIRAN CERTIFICADOS O GARANTIAS EMITIDOS EN EL CURSO NORMAL DE OPERACIONES O REGISTRADOS COMO PAGO, POR UNA SUBDIVISION POLITICA.

(ii) TODA CANTIDAD O PROPIEDAD RECIBIDA COMO PAGO DE DIVIDENDOS O INTERES, O CUALQUIER GANANCIA EN LA VENTA O REDENCION DE VALORES INVERTIDOS, CUYA COMPRA SE AUTORICE POR LEY.

(iii) TODA SUMA O PROPIEDAD RECIBIDA POR UN DISTRITO ESCOLAR O DISTRITO DE COLEGIO COMUNAL EN CALIDAD DE FIDUCIARIO, CONSERVADOR, GUARDIAN, O AGENTE.

(iv) CUALQUIER SUMA RECIBIDA COMO DONACION Y ASISTENCIA, DEL TIPO QUE SEA, DEL GOBIERNO FEDERAL O DE CUALQUIERA DE SUS AGENCIAS, EXCEPTO ASISTENCIA ESCOLAR EN AREAS AFECTADAS POR EL GOBIERNO FEDERAL.

(v) CUALQUIER CANTIDAD RECIBIDA COMO DONACION, ASISTENCIA, CONTRIBUCIONES O REGALOS DE TODO TIPO EXCEPTO SUMAS RECIBIDAS DIRECTA O INDIRECTAMENTE EN LUGAR DE IMPUESTOS RECIBIDOS DIRECTA O INDIRECTAMENTE DE CUALQUIER AGENCIA PARTICULAR O ASOCIACCION, O DE CUALQUIER INDIVIDUO.

(vi) CUALQUIER SUMA RECIBIDA DEL ESTADO POR MOTIVO DE COMPRAR TERRENOS, EDIFICIOS O MEJORAMIENTOS, O DE CONSTRUIR EDIFICIOS O MEJORAS.

(vii) CUALQUIER SUMA RECIBIDA DE ACUERDO CON TRASLADOS DURANTE EL AÑO FISCAL DESDE OTRA AGENCIA, DEPARTAMENTO, OFICINA, JUNTA, COMISION, AUTORIDAD, CONSEJO O INSTITUCION DEL MISMO DISTRITO ESCOLAR O DE COLEGIO COMUNAL QUE SE INCLUYAN COMO RENTAS LOCALES PARA DICHO AÑO FISCAL O QUE SE EXCLUYAN DE LAS RENTAS LOCALES BAJO OTRAS DISPOSICIONES DE ESTA SECCION.

(viii) CUALQUIER CANTIDAD O PROPIEDAD ADQUIRIDA POR UN DISTRITO DE COLEGIO COMUNAL CON EL PROPOSITO DE COMPRAR TERRENOS, EDIFICIOS O MEJORAMIENTOS, O DE CONSTRUIR EDIFICIOS O MEJORAS.

(ix) TODA CANTIDAD RECIBIDA A CAMBIO DE BIENES O SERVICIOS DE ACUERDO CON UN CONTRATO CON OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL O CON EL ESTADO, Y GASTADA POR LA OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL O POR EL ESTADO, DE ACUERDO CON LA LIMITACION DE GASTOS VIGENTE AL SER GASTADAS LAS CANTIDADES POR LA OTRA SUBDIVISION POLITICA, DISTRITO ESCOLAR, DISTRITO DE COLEGIO COMUNAL, O POR EL ESTADO.

(x) CUALQUIER SUMA RECIBIDA COMO DERECHOS DE MATRICULA O CUOTAS DIRECTA O INDIRECTAMENTE DE CUALQUIER AGENCIA PUBLICA O PARTICULAR, ASOCIACION, O INDIVIDUO ALGUNO.

(xi) CUALQUIER IMPUESTO AD VALOREM RECIBIDO DE ACUERDO ELECCIONES CON MOTIVO DE EXCEDER LA LIMITACION PRESCRITA POR LA SECCION 19 DE ESTE ARTICULO O POR MOTIVO DE PROVEER FONDOS PARA PAGAR LOS GASTOS EN EXCESO DE LA LIMITACION DE GASTOS PRESCRITA POR LA SUBSECCION (7) DE ESTA SECCION.

(xii) CUALQUIER CANTIDAD RECIBIDA DURANTE EL AÑO FISCAL, COMO REEMBOLSO O DEVOLUCION, O COMO OTRA RECUPERACION DE SUMAS GASTADAS QUE SE HAYAN ACREDITADO A LA LIMITACION DE GASTOS PARA DICHO AÑO FISCAL O QUE SE HAYAN EXCLUIDO DE LAS RENTAS LOCALES DE ACUERDO CON OTRAS PROVISIONES DE ESTA SUBSECCION.

(d) PARA LOS PROPOSITOS DE LA SUBSECCION (2) DE ESTA SECCION, SE EXCLUYEN LOS SIGUIENTES ARTICULOS DE LAS RENTAS LOCALES:

(i) CUALQUIER CANTIDAD RECIBIDA COMO UTILIDAD DE LA VENTA, CONTRATACION O ALQUILER DE PROPIEDADES ESCOLARES SEGUN AUTORIZA LA LEY.

(ii) TODA SUMA RECIBIDA DE LA RECAUDACION DE CAPITALES, SEGUN AUTORIDAD DE LA LEY.

(iii) CUALQUIER SUMA RECIBIDA DE LA ADQUISICION, OPERACION O MANUTENCION DE SERVICIOS ESCOLARES, DE TIPO COMERCIAL, QUE SEAN COMPLETA O PREDOMINANTEMENTE SUFICIENTES A SI MISMOS.

(iv) CUALQUIER CANTIDAD RECIBIDA CON EL FIN DE PROVEER FONDOS PARA PAGAR GASTOS AUTORIZADOS EN CASOS DE DESTRUCCION O PERJUICIO A LAS FACILIDADES DE UN DISTRITO ESCOLAR SEGUN AUTORIZADO POR LEY.

(e) "STUDENT POPULATION" MEANS THE NUMBER OF ACTUAL, FULL-TIME OR THE EQUIVALENT OF ACTUAL FULL-TIME STUDENTS ENROLLED IN THE SCHOOL DISTRICT OR COMMUNITY COLLEGE DISTRICT DETERMINED IN A MANNER PRESCRIBED BY LAW.

(5) THE ECONOMIC ESTIMATES COMMISSION SHALL ADJUST THE AMOUNT OF EXPENDITURES OF LOCAL REVENUES IN FISCAL YEAR 1979-1980, AS USED TO DETERMINE THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION, TO REFLECT SUBSEQUENT TRANSFERS OF ALL OR ANY PART OF THE COST OF PROVIDING A GOVERNMENTAL FUNCTION, IN A MANNER PRESCRIBED BY LAW. THE ADJUSTMENT PROVIDED FOR IN THIS SUBSECTION SHALL BE USED IN DETERMINING THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION BEGINNING WITH THE FISCAL YEAR IMMEDIATELY FOLLOWING THE TRANSFER.

(6) THE ECONOMIC ESTIMATES COMMISSION SHALL ADJUST THE AMOUNT OF EXPENDITURES OF LOCAL REVENUES IN FISCAL YEAR 1979-1980, AS USED TO DETERMINE THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION, TO REFLECT ANY SUBSEQUENT ANNEXATION, CREATION OF A NEW DISTRICT, CONSOLIDATION OR CHANGE IN THE BOUNDARIES OF A DISTRICT, IN A MANNER PRESCRIBED BY LAW. THE ADJUSTMENT PROVIDED FOR IN THIS SUBSECTION SHALL BE USED IN DETERMINING THE EXPENDITURE LIMITATION PURSUANT TO SUBSECTION (1) OF THIS SECTION BEGINNING WITH THE FISCAL YEAR IMMEDIATELY FOLLOWING THE ANNEXATION, CREATION OF A NEW DISTRICT, CONSOLIDATION OR CHANGE IN THE BOUNDARIES OF A DISTRICT.

(7) THE LEGISLATURE SHALL ESTABLISH BY LAW EXPENDITURE LIMITATIONS FOR EACH SCHOOL DISTRICT BEGINNING WITH THE FISCAL YEAR BEGINNING JULY 1, 1980. EXPENDITURES BY A SCHOOL DISTRICT IN EXCESS OF SUCH AN EXPENDITURE LIMITATION MUST BE APPROVED BY A MAJORITY OF THE ELECTORS VOTING ON THE EXCESS EXPENDITURES.

(8) THE LEGISLATURE SHALL ESTABLISH BY LAW A UNIFORM REPORTING SYSTEM FOR DISTRICTS TO INSURE COMPLIANCE WITH THIS SECTION. THE LEGISLATURE SHALL ESTABLISH BY LAW SANCTIONS AND PENALTIES FOR FAILURE TO COMPLY WITH THIS SECTION.

(9) THIS SECTION IS NOT EFFECTIVE FOR ANY COMMUNITY COLLEGE DISTRICT UNTIL THE FISCAL YEAR BEGINNING JULY 1, 1981.

(10) SUBSECTIONS (2), (3), (5) AND (6) OF THIS SECTION DO NOT APPLY TO SCHOOL DISTRICTS UNTIL THE FISCAL YEAR BEGINNING JULY 1, 1981.

(e) "POBLACION ESTUDIANTIL" SIGNIFICA EL NUMERO DE ESTUDIANTES DE TIEMPO COMPLETO QUE ASISTEN VERDADERAMENTE, O EL EQUIVALENTE DE VERDADEROS ESTUDIANTES DE TIEMPO COMPLETO INSCRITOS EN EL DISTRITO ESCOLAR O EN EL DISTRITO DE COLEGIO COMUNAL, DETERMINADO DE MANERA PRESCRITA POR LEY.

(5) LA COMISION DE PROYECCIONES ECONOMICAS DEBERA AJUSTAR LA CANTIDAD DE GASTOS DE RENTAS LOCALES EN EL AÑO FISCAL 1979-1980, CONFORME ESTA INDIQUE LA LIMITACION DE GASTOS DE ACUERDO CON LAS SUBSECCIONES (1) Y (2) DE ESTA SECCION, PARA REFLEJAR TRASLADOS POSTERIORES DE TODO O DE CUALQUIER PARTE DEL COSTO DE PROVEER UNA FUNCION GUBERNAMENTAL, DE MANERA PRESCRITA POR LEY, EL AJUSTE QUE SE DISPONE EN ESTA SUBSECCION SE USARA PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON LAS SUBSECCIONES (1) Y (2) DE ESTA SECCION, COMENZANDO CON EL AÑO FISCAL QUE SIGA INMEDIATAMENTE AL TRASLADO.

(6) LA COMISION DE PROYECCIONES ECONOMICAS DEBERA AJUSTAR LA CANTIDAD DE GASTOS DE RENTAS LOCALES DURANTE EL AÑO FISCAL 1979-1980, CONFORME ESTA INDIQUE LA LIMITACION DE GASTOS DE ACUERDO CON LA SUBSECCION (1) DE ESTA SECCION, PARA REFLEJAR CUALQUIER ANEXION SUBSECUENTE, CREACION DE NUEVOS DISTRITOS ESCOLARES, CONSOLIDACION O CAMBIOS DE LINDEROS O LIMITES DE DISTRITOS, DE MANERA PRESCRITA POR LEY. SE USARA EL AJUSTE QUE SE DISPONE EN ESTA SUBSECCION PARA DETERMINAR LA LIMITACION DE GASTOS DE ACUERDO CON EL AÑO FISCAL QUE SIGA INMEDIATAMENTE AL ANEXION, CREACION DE UN NUEVO DISTRITO, COLSOLIDACION O CAMBIO DE LINDEROS O LIMITES DE UN DISTRITO.

(7) LA LEGISLATURA ESTABLECERA POR LEY LIMITACIONES DE GASTOS PARA CADA DISTRITO ESCOLAR COMENZANDO CON EL AÑO FISCAL QUE EMPIEZA EL 1 DE JULIO DE 1980. LOS GASTOS HECHOS POR UN DISTRITO ESCOLAR EN EXCESO DE DICHA LIMITACION DE GASTOS DEBE SER APROBADA POR LA MAYORIA DE LOS VOTANTES APTOS QUE VOTEN SOBRE EL EXCESO DE GASTOS.

(8) LA LEGISLATURA ESTABLECERA POR LEY UN SISTEMA UNIFORME PARA LAS DECLARACIONES DE LOS DISTRITOS A FIN DE ASEGURAR CUMPLIMIENTO CON ESTA SECCION. LA LEGISLATURA ESTABLECERA POR LEY SANCIONES Y CASTIGOS POR EL NO CUMPLIR CON ESTA SECCION.

(9) NO ESTARA EFECTIVA ESTA SECCION PARA NINGUN DISTRITO DE COLEGIO COMUNAL HASTA EL AÑO FISCAL QUE COMIENZA JULIO 1 DE 1981.

(10) NO SON APLICABLES LAS SUBSECCIONES (2), (3), (5) Y (6) DE ESTA SECCION A LOS DISTRITOS ESCOLARES HASTA EL AÑO FISCAL QUE COMIENZA JULIO 1, 1981.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. 19-124)

Proposition 109 would amend the Constitution of Arizona to impose expenditure limitations on all school districts collectively and each community college district. Each communtity college district and all school districts collectively could only expend the same amount of "local revenues" expended in fiscal year 1979-1980, adjusted by the economic estimates commission to reflect:

1. Changes in student population.
2. Changes in the cost of living.
3. Transfers of the cost of governmental functions.
4. Annexation or other change in boundary of the district or creation of a new district.

Detailed definitions would prescribe what "local revenues" would be subject to the expenditure limitation. "Student population" and "cost of living", as well as other terms, are defined.

The aggregate expenditures of local revenues by all school districts could not exceed total expenditures of local revenues by all school districts in the fiscal year 1979-1980, as adjusted.

The approval of the electors of a particular school district would not be sufficient in itself to authorize excess expenditures if such expenditures resulted in the aggregate expenditures of all school districts exceeding the limitation imposed by this proposal. The only method by which the aggregate limitation could be exceeded would be by a two-thirds vote of each house of the Legislature, and then only for a single fiscal year.

Provisions could be prescribed by the Legislature to allow community college expenditures in excess of the limitations.

Additionally, Proposition 109 requires the Legislature to establish expenditure limitations for each individual school district beginning with the fiscal year 1980-1981. Expenditures in excess of such limitation by a school district would require approval by a majority of electors voting on such excess.

The Legislature would be required to provide for uniform reporting to assure compliance with the expenditure limitations and to provide sanctions and penalties for failure to comply.

The expenditure limitation on community college districts and the aggregate expenditure limitation for all school districts collectively would not take effect until fiscal year 1981-1982.

ANALISIS POR EL CONSEJO LEGISLATIVO

(En conformidad con A.R.S. 19-124)

La Proposición 109 enmendaría la Constitución de Arizona para imponer limitaciones de gastos sobre todos los distritos escolares colectivamente y sobre cada distrito de colegio comunal. Cada distrito de colegio comunal y todos los distritos escolares en conjunto podrían gastar sólo la misma cantidad de "rentas locales" gastadas en el año fiscal 1979-1980, de acuerdo con ajustes de la comisión para proyecciones económicas, a fin de reflejar:

1. cambios en la población estudiantil;

2. cambios en el costo de la vida;

3. traslados del costo de las funciones gubernamentales;

4. anexiones u otros cambios de lindero en los distritos o la creación de distritos nuevos.

Definiciones detalladas prescribirían cuales "rentas locales" se regirían por la limitación de gastos. "Población estudiantil" y "costo de la vida", igual que otros términos, están definidos.

La totalidad de gastos de rentas locales por todos los distritos escolares no podría sobrepasar el total de gastos de rentas locales por todos los distritos escolares en el año fiscal 1979-1980, según los ajustes.

La aprobación de los votantes de un dado distrito escolar no sería suficiente de por sí para autorizar gastos extras, si tales gastos resultan en un total de gastos por todos los distritos escolares en exceso de la limitación que impone esta propuesta. El único modo por el que la limitación total se pudiera exceder sería por medio de voto de dos tercios de cada cámara legislativa, y entonces solamente para un solo año fiscal.

La legislatura podría prescribir disposiciones a fin de permitir los gastos de colegios comunales en exceso de la limitación.

Además, la proposición 109 requiere que la legislatura establezca limitaciones de gastos para cada uno de los distritos escolares, comenzando el año fiscal 1980-1981. Los gastos por encima de dicha limitación por un distrito escolar requerirían aprobación por la mayoría de los votantes que votaran sobre el exceso.

Sería requisito que la legialatura provea la uniformidad de declaraciones con el fin de asegurar cumplimiento con la limitación de gastos y de proveer sanciones y castigos por falta de cumplimiento.

La limitación de gastos sobre los distritos de colegio comunal y la limitación total de gastos para todos los distritos escolares en conjunto no entrarían en vigor hasta el año fiscal 1981-1982.

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 109

School districts levy more property taxes than any other taxing jurisdiction in this state. Community college districts are presently the only taxing jurisdictions in this state which may levy property taxes and have no limitation whatsoever placed upon them. School district and community college district spending must be limited to control spending at the local level. This proposition would terminate local government's blank check drawn on people's earnings. Changes in student population, changes in the cost of living, transfers of the cost of governmental functions and changes in the boundary of a school or communtiy college district are factors which will be considered in order to provide adequate funding for both new and continuing programs.

Under our present system there is very little incentive for school district and community college district governing boards to limit the amount of monies they levy by way of the property tax. There is tremendous and continuous pressure on the governing boards from special interest groups and employees of the districts to increase the burden on the taxpayers of this state in order to fund new programs, expand existing programs or increase salaries.

Lack of adequate limitation on total spending by school districts and on any area of community college spending is responsible for the ever-increasing local tax burden. This burden will continue to increase if Proposition 109 fails.

Proposition 109 would accommodate a reasonable growth in school and community college district expenditures justified by factors beyond the control of the governing boards of school and community college districts. This would protect basic educational needs while at the same time controlling excessive spending.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 109

This proposal is vaguely worded and confusing and would require a sizeable bureaucracy to administer its provisions. It assumes that the complex problems of highly diverse school districts and community college districts can be covered by a precise mathematical formula imposed by state officials on local districts.

Local school districts and community college districts should be under local control without interference by state officials who have little knowledge of local needs and problems. Individual local school districts have already been placed under several expenditure limitations so a different overall limit is not needed. In addition, there is no relationship between the statutory expenditure limitation imposed on individual school districts and the aggregate limit imposed by this proposal.

While this proposition authorizes the Legislature to approve expenditures in excess of the prescribed limitation upon a two-thirds vote of each house, it does not specify whether the vote must be on a bill or resolution. Conceivably, the override could be accomplished by a voice vote on a simple motion without adequate public debate.

School districts and community college districts have traditionally been under the control of the people whose needs are served by such districts. This proposition would reduce that local control by making district spending subject to the dictates of an impersonal distant state bureaucracy.

ARGUMENTOS DEL CONSEJO LEGISLATIVO A FAVOR DE LA PROPOSICION 109

Los distritos escolares gravan más impuestos sobre bienes que ninguna otra jurisdicción de impuestos estatal. Actualmente, los distritos de colegio comunal son las únicas jurisdicciones para impuestos del estado con poder de gravar impuestos, y no hay ninguna limitación sobre ellos. Hay que limitar los gastos de los distritos escolares y de colegio comunal a fin de controlar gastos a nivel local. Esta proposición acabaría con el cheque en blanco que el gobierno tiene girado sobre los sueldos de todo el mundo. Los cambios en la población estudiantil y en el costo de la vida, traslados del costo de funciones gubernamentales y cambios de lindero en los distritos escolares o de colegio comunal constituyen factores que se considerarán con el fin de proveer fondos adecuados para programas, tanto nuevos como existentes.

Bajo el presente sistema existe bien poco incentivo, para las juntas administrativas de los distritos escolares y do colegio comunal, de limitar la cantidad de dineros que ellos gravan o exigen mediante el impuesto sobre bienes. Existe, de parte de grupos de intereses especiales y de empleados de los distritos, una presión enorme y continua sobre las juntas administrativas, por aumentar la carga tributaria sobre los pagadores de impuestos de este estado, con el objeto de reunir fondos para nuevos programas, ampliar programas existentes o aumentar sueldos.

Los impuestos locales, cada vez más pesados, se deben a la falta de limitaciones adecuadas sobre el conjunto de gastos por los distritos escolares y gastos de toda clase de colegio comunal. Los impuestos seguirán subiendo si no se aprueba la Proposición 109.

La Proposición 109 se conformaría a una proporción de crecimiento razonable en los gastos de distritos escolares y los de distritos de colegio comunal ocasionados por factores que no puedan controlar las juntas administrativas de distritos escolares y de colagio comunal. Esto protegería servicios básicos educativos a la vez que controle gastos excesivos.

ARGUMENTOS DEL CONSEJO LEGISLATIVO EN CONTRA DE LA PROPOSICION 109

Esta propuesta padece de un lenguaje vago y confuso, y haría falta una burocracia bastante grande para administrar sus provisiones. Asume que los complicados problemas de los muy diversos distritos escolares y distritos de colegio comunal puedan caber en una fórmula matemática exacta impuesta por los oficiales del estado a los distritos locales.

Los distritos escolares y de colegio comunal locales deberían estar bajo control local sin la intervención de oficiales estatales, que poseen poco conocimiento de problemas y necesidades locales. A los distritos escolares locales individuales se les ha puesto ya varias restricciones, de modo que no se necesita un nuevo límite total. Además, no hay relación entre la limitación de gastos estatutaria que se impone a ciertos distritos escolares y el límite total que impone esta propuesta.

Mientras que esta proposición autoriza que la legislatura apruebe gastos en exceso de la limitación prescrita, con el voto de dos tercios de cada cámara, no especifica si la votación será por un proyecto legal o por una resolución. Es posible que se pudiera lograr la anulación mediante voto por voces u oral en una moción simple sin que el público la discuta adecuadamente.

Tradicionalmente, los distritos escolares y de colegio comunal han sido controlados por la gente a cuyas necesidades dichos distritos sirven. Esta proposición reduciría ese control local al supeditar gastos en los distritos a los dictámenes de una burocracia estatal lejana e impersonal.

ARIZONA JOB TRAINING PROGRAM

PROGRAM RULES & GUIDELINES (RULES)[1]

Section 1. Overview

The Arizona Job Training Program (Program), administered pursuant to A.R.S. § 41-1544 (effective August 9, 2017; *see* SB1524/HB2539) by the Arizona Commerce Authority (Authority), offers grants to assist eligible Arizona employers in maintaining or exceeding employee training expenditures. By supporting the design and delivery of customized employee training programs that increase the skill and wage levels of employee-trainees, the Program stimulates economic growth in Arizona.

Program grants are payable on a cost reimbursement basis. Grants cover up to 75 percent of the eligible costs for New Employee training and up to 50 percent of the eligible costs for Incumbent Employee training.

In respect to grants issued on or after October 8, 2017, grants for both New Employee training and Incumbent Employee training (if applicable): (i) will provide (a) up to $8,000 of eligible training costs per employee-trainee in the case of rural employers and employers with fewer than 100 employees and (b) up to $5,000 of eligible training costs per employee-trainee in the case of all other employers, and (ii) the maximum grant amount for an employer in all cases will be $1.3 million and (iii) the maximum grant term in all cases will be determined by the Authority.

Grants for New Employee training will be awarded on the basis of a competitive application process to the extent that the aggregate New Employee training grant amounts applied for exceed the amount of funds allocated to each funding round by the Authority. Grants for Incumbent Employee training may be awarded to eligible employers on the basis of a random blind drawing. The Authority will provide notice of certain elements of each funding round via email to those requesting updates regarding the Program, as well as on its website consistent with Section 4(A)(1) below.

The Program was initially funded by the Arizona Job Training Tax (the "JTT"), which financed the Arizona Job Training Fund. The JTT expired on December 31, 2015 (collections in arrearages of JTT liabilities arising through December 31, 2015 are continuing), but the Arizona Job Training Fund continues to operate with other monies that were initially funded by the JTT. The Program terminates on December 31, 2020, after which time no new grants

[1] These Rules are issued under the authority of A.R.S. § 41-1005(A) (28) to govern the administration of the Arizona Job Training Program. These Rules supersede and replace Rules 14-01, 15-01, 15-03, 16-02 and 17-03 which superseded and replaced the rules set forth in Title 20, Chapter 1, Article 2 of the Arizona Administrative Code. In the case of any conflict between these Rules and governing statutes, the statutes will prevail. Section 8 of these Rules provides a glossary of capitalized terms used in these Rules.

will be issued; grants issued on or before, and terminating after, December 31, 2020 will remain in effect through their respective contractual end date.

Section 2. Grant Eligibility

A. Eligible Employers. Subject to all additional requirements set forth in these Rules, an Employer or a Consortium is eligible for a Program grant if the Employer or each member of the Consortium:
   1. Is registered with and participating in the federal E-verify program as required by A.R.S. § 23-214(B);
   2. Pays Employee-trainees compensation as prescribed in Rules Section 2(b)(1); and
   3. In the case of an application for Incumbent Employee training, at least 12 months have elapsed since completion of any prior Incumbent Employee training grant awarded the Employer.

B. Eligible Employees. Subject to all additional requirements of these Rules, Employees are eligible to be included in an Employer's approved Training Plan if:
   1. The average wage payable to all Employee-trainees throughout the term of the Training Plan is at least equal to the Qualifying Wage Rate as established as follows:
      a. Employers in Maricopa or Pima Counties with 100 or more employees: 1.0 x County Median Wage
      b. Employers in Maricopa or Pima Counties with 1 – 99 employees: 0.8 x County Median Wage
      c. All Counties outside of Maricopa and Pima: 0.8 x Balance of State Median Wage
   2. In the case of an application for New Employee training, the Employee-trainees are hired in employment positions qualifying as Net New Jobs *after* the date of submission of the Program grant application.

Section 3. Grants – Types of Grants, Amounts of Grants, Other Considerations

A. Training Type. Grants may be issued *either* for New Employee training or Incumbent Employee training. New Employee training and Incumbent Employee training cannot be combined within the same grant. An Employer may have only one grant for each type of training at any point in time.

B. Term. The maximum period will be determined by the Authority and disclosed pursuant to Section 4(A)(1) below prior to each funding round.

C. Training Plans and Budgets. Grants are based on an Employer's approved Training Plan, which will include an approved training budget. Grant funds are paid to reimburse a specified percentage of eligible training expenses incurred by an Employer in accordance with the approved Training Plan. The expenses must be incurred or contracted for *after* the date of submission of a Program grant application in the case of New Employee training (though such training is done at the Employer's risk of non-reimbursement unless or until an award is made) and *after* the start of the grant training period in the case of Incumbent Employee training.

D. Eligible Training Expense. Generally speaking, allowable training expenses must relate to job skill instruction that upgrades specific employee skills either for an Employee's current job performance or an Employee's performance following a job promotion.

E. Section 1 of Schedule 1 to these Rules enumerates the specific allowable training expenses that qualify as expenses eligible for reimbursement by the Program. Section 2 of Schedule 1 to these Rules enumerates, for illustrative purposes, certain (but not all) training expenses that expressly do not qualify as reimbursable expenses.

F. Grant Amount. Grant amounts are determined as follows:

1. Maximum Grant Amount.
   a. The maximum Program grant amount for any single grant will be determined by the Authority and disclosed in the notice set forth in Section 4(A)(1).
   b. If an Employer with an existing Program grant qualifies for a second grant at the same time (i.e., including, for example, if an Employer with a grant for Incumbent Employee training qualifies for a grant for New Employee training before the Incumbent Employee training is completed), the *combined* grant amounts cannot exceed the maximum amount set forth in the disclosure provided pursuant to Section 4(A)(1).
2. Maximum Per-Employee Grant Allocation. Grants cannot exceed the following limits in terms of training dollars per Employee-trainee:
   a. New Employee Training:
      i. Employers other than Small Employers:
         (A) Urban Employers: $5,000 per Employee-trainee filling a Net New Job.
         (B) Rural Employers: $8,000 per Employee-trainee filling a Net New Job.
      ii. Small Employers: $8,000 per Employee-trainee filling a Net New Job irrespective of the location of the Employer.
   b. Incumbent Employee Training:
      i. Employers other than Small Employers:
         (A) Urban Employers: $5,000 per Employee-trainee filling an Incumbent Employee job.
         (B) Rural Employers: $8,000 per Employee-trainee filling an Incumbent Employee job.
      ii. Small Employers: $8,000 per Employee-trainee filling an Incumbent Employee job irrespective of the location of the Employer.
3. Grants as a Percentage of Training Costs. Grants may not exceed the following limits in terms of the grant as a percentage of total eligible training costs under an approved Training Plan:

   a. New Employee Training: 75 percent, with the Employer responsible for the remaining 25 percent. Accordingly, for an approved Training Plan for Employee-trainees filling Net New Jobs, the Employer must provide an Employer Match in cash or other resources, including qualified expenditures and authorized in-kind contributions at least equal to 25 percent of the eligible training costs included in the approved Training Plan.

   b. Incumbent Employee Training: 50 percent, with the Employer responsible for the remaining 50 percent (the Employer Match in such case).

   c. Employer Match. Section 3 of Schedule 1 to these Rules enumerates those expenditures and in-kind contributions that qualify as an Employer Match. Such expenditures must be incurred or contracted for (or in-kind contributions made) *after* the date of submission of an application for a Program grant application in the

case of New Employee training and *after* the start of the grant training period in the case of Incumbent Employee training.

4. Relationship to Prior Year Training Budget. Grant funding can be provided only when an Employer's training budget in the year of the grant application is equal to or in excess of the Employer's training budget in the preceding year.

Section 4. Applications, Review, and Awards

A. Time for Filing Applications/Description of the Funding Round.
   1. Prior to each funding round, the Authority will indicate via email and on its website, www.azcommerce.com:
      a. the date by which applications for Program grants must be submitted for each type of Program grant (i.e., New Employee training or Incumbent Employee training),
      b. the total amount of allocated funds made available for the funding round,
      c. the maximum amount available for each grant offered during the funding round, and
      d. the maximum term of the grant associated with each funding round.

B. Forms for Filing Applications. The Authority maintains two (2) distinct forms for use in applying for Program grants: one for New Employee training and another for Incumbent Employee training. Each applicant must use the form specifically designated for use in each case. Links to the application forms are available on the Authority's website referenced in subsection (A) above.

C. Content of Application Forms. An Employer must provide all information, including supporting documents, required by the application form.

D. Method of Filing Applications. Applications for Program grants must be submitted electronically through the Authority's Electronic Application System (EASY). EASY automatically dates and time stamps each Program application thereby establishing that the application was submitted in advance of the deadline for accepting such applications.

E. Review of Applications.
   1. Only applications that are Substantially Complete in the Authority's determination will be reviewed for funding. An application will not be regarded as Substantially Complete if, among other matters, the Employer-applicant fails to adequately respond to the questions in the application form and/or states that required information will be provided at a later date.
   2. During its review of an application, the Authority may request additional information, conduct a site visit, or otherwise discuss with the Employer any issue related to or arising from the application.
   3. If an Employer fails to provide any requested additional information by the earlier of (i) 14 calendar days after request by the Authority (or up to the number of additional days that may be expressly granted by the Authority if the Employer seeks and receives an extension within the initial 14 day period – a taxpayer may receive an extension for good cause upon a showing of extreme hardship or undue burden being experienced by the taxpayer (extreme hardship or undue burden experienced by a third-party consultant or other representative of taxpayer shall not constitute adequate basis for an extension)) or (ii) the deadline for final submission of Substantially Complete applications for a competitive round (as applicable), the application will be considered withdrawn. If an

application is considered withdrawn, the application is treated as if it had not been submitted. As a result, any priority or timeliness associated with the application date will be lost.

F. Priority. With respect to establishing priority among otherwise eligible applications for Program funding, the Authority will award grants as follows:

1. New Employee Training. Grants for New Employee training will be awarded on the basis of a competitive process to the extent that the aggregate New Employee training grant amounts applied for exceed the amount of funds allocated to each funding round by the Authority. For each competitive round of applications, the ACA will provide at least 30 days' notice of the application due date and all necessary information regarding the process, selection criteria, and other applicable details as contemplated pursuant to Section 4(A)(1). As noted above, EASY automatically dates and time stamps each application thereby establishing that an application for New Employee training has been submitted in advance of the deadline for the applicable competitive round (subject to Authority review for determination that the application is Substantially Complete).
2. Incumbent Employee Training. Grants for Incumbent Employee training, if applicable, are awarded through the random, blind draw process described in Section 5 of these Rules.

G. Awards.

1. With respect to qualifying applications for which funding is available, the Authority will determine the amount of the Program grant in accordance with Rules Section 3. Based on the application of the criteria in these Sections, the grant amount may be lower than requested in an application.
2. The Authority will notify a successful Employer of a Program grant award and provide a Grant Agreement for the Employer-applicant's signature.

H. Processing Fee. Following the notification of award, the successful Employer-applicants must remit to the Authority a non-refundable application fee equal to one percent (1%) of the maximum grant amount awarded prior to execution of a Grant Agreement. The processing fee must be paid by check or wire transfer.

I. Grant Agreements.

1. Grant Agreements will set forth the specific terms governing a Program grant.
2. In addition to the Program requirements set forth by statute and these Rules, Grant Agreements may set forth terms that, in the Authority's discretion, ensure that Program funds are used appropriately and that the interests of the Authority and the State of Arizona are otherwise adequately protected and advanced.
3. Except in extraordinary circumstances, as determined by the Authority, the terms of Grant Agreements are not negotiable.
4. A sample grant agreement may be furnished by the Authority upon request by an Employer after an Employer has submitted a Program grant application. Such sample will be provided for the review of the Employer, but the terms thereof may change through the selection and award process.
5. Within 15 calendar days after receipt of the Grant Agreement, the Employer-applicant must sign the document and return the document and a completed "Substitute Form W-9" to the Authority. If an Employer-applicant fails to comply in a timely manner, the Authority may consider the application as withdrawn.

J. Protests and Appeals.
   1. If the Authority denies an application, the Employer-applicant may appeal the decision within 30 days by submitting a timely written request for a hearing or a notice of appeal with an administrative law judge or the CEO pursuant to A.R.S. § 41-1092 *et seq.* The denial of a grant prohibits the Employer-applicant from receiving an award under the Program unless the appeal is successful.

Section 5. Random Blind Drawings for Incumbent Employee Training Awards

A. As noted, if applicable, the Authority will award Program grants for Incumbent Employee training on the basis of random blind drawings.
B. Consistent with Rules Section 4(A), the Authority will provide notice on its website when applications for Program grants for Incumbent Employee training will be accepted. Such notice will also: (i) identify the date and time established for the next random blind drawing, which will be at least 30 days from the date of the notice and (ii) specify the deadline by which expressions of Employer interest in participating in a forthcoming drawing must be submitted.
C. An Employer can evidence its interest in participating in a forthcoming drawing by (i) completing the "Election to Participate" form that will be available on the Authority's website for this purpose and (ii) submitting such form to the Authority electronically via EASY by the deadline established therefor. The length of such form will not exceed two (2) pages. An Employer is not required to submit the formal application for Incumbent Employee training at the same time as submission of the "Election to Participate" form.
D. Each random blind drawing will be conducted at the offices of the Authority at the date and time referenced therefor in the Authority's notice.
E. In carrying out each random, blind drawing:
   1. A single drawing ticket will be assigned to each Employer who has submitted an "Election to Participate" form in a timely manner.
   2. All tickets for a drawing will be placed in an opaque container and stirred. The Authority will read the applicant's name on each drawing ticket as the ticket is placed in the container.
   3. The Authority will hand pick each drawing ticket from the container one at a time until all tickets have been drawn from the container. The order in which the drawing tickets are removed from the container represents the order in which Incumbent Employee grant awards will be made subject to review of grant applications, final qualification and availability of funding.
   4. Following the drawing, the Authority will notify each Employer that submitted an "Election to Participate" form of the Employer's position in the order established by the drawing.
   5. Further, following the drawing, the Authority will review actual Incumbent Employee applications, in the order established by the drawing, to determine their respective eligibility. For this purpose, Employers will be required to submit formal Incumbent Employee applications in accordance with the method described by Rules Section 4(D) not later than the date specified by the Authority. Failure to submit an application in a timely manner will result in a cancellation of the priority established by the drawing.
   6. Review of Incumbent Employee applications will be conducted in the manner described

by Rules Section 4(E).

7. In the event funds are insufficient to fully fund an otherwise eligible application in the drawing, the Authority will offer the then available funds to the Employer- applicant. The Employer-applicant may then either accept the *funds* or withdraw its application. If a post-drawing application is withdrawn from the drawing process, the Authority will offer the otherwise allocable amount to the Employer-applicant next in rank.
8. If funding is fully absorbed, the Authority will provide notice thereof to the remaining applicants in the drawing that have not been previously approved or denied a grant.

Section 6. Competitive Process for New Employee Training Awards

A. As noted, the Authority will award Program grants for New Employee training on the basis of a competitive application process to the extent that the aggregate New Employee training grants applied for exceed the amount of funds allocated to each funding round by the Authority.
B. Recommendations regarding priority for awards in the competitive process will be established by a panel of judges, which may include Authority staff and non-Authority staff, who will review grant applications and establish such recommendations. The judges will evaluate grant applications based on the factors set forth in Schedule 2 to these Rules. Final decisions regarding priority for awards will be determined by the Authority's CEO.
C. The Authority may adopt more detailed administrative procedures, outside its Rules process, consistent with these Rules and applicable law, to implement the provisions of this Section. Such procedures will be posted on the Authority's website.
D. If an application is withdrawn from the competitive process, or if lesser funds are allocated in Grant Agreements than were allowed in awards, the Authority will offer the otherwise allocable amounts to the Employer-applicant(s) next in rank.

Section 7. Reporting and Reimbursements

A. Reporting.
   1. General. On forms and in the manner determined by the Authority, Grantees must submit through EASY: (i) quarterly progress reports throughout the term of the Program grant and (ii) a final progress report not later than the time established by the Grant Agreement. The Authority may terminate a grant or demand repayment of prior grant payments for failure to comply with these reporting requirements.
   2. Requests for Reimbursement. Grantees must request reimbursement for approved training expenses on a form and in the manner determined by the Authority. At the Authority's discretion, such requests may be required to be signed by all employees receiving training and/or training providers including in-house training providers.
B. Site Visit. The Authority may conduct one or more site visits of the Grantee's place of business during the term of the grant or before the Authority makes the final disbursement of funds to the Grantee.
C. Final Reimbursement. Upon a Grantee's request, the Authority will determine the amount of a final grant disbursement.
   1. If the Authority determines that the Grantee has met all Program and Grant Agreement terms and conditions, the Authority will make the final grant disbursement due.

2. If the Authority determines that the Grantee has not met all Program and Grant Agreement terms and conditions, the Authority may:
   a. Make no payment or make a reduced final payment; or
   b. Send written notification to the Grantee requiring full or partial repayment of any amounts previously paid to the Grantee.

   The Authority retains the discretion to require full or partial repayment of any amounts previously paid to the Grantee if the Grantee has failed to comply with all Program and Grant Agreement terms and conditions irrespective of whether the Grantee formally requests a final grant disbursement.

Section 8. Definitions

The following definitions, which are used in the preceding provisions of the Rules or in the Schedules, have the following meanings unless the context otherwise dictates:

"Affiliate" means, in respect to a specified person or entity, a person or entity that, directly or indirectly, controls, is controlled by, or is under common control with such specified person or entity. In the context of an Employer, a parent entity owning at least 51 percent of the ownership interests of the Employer is deemed an "Affiliate" of the Employer. Similarly, in the context of an Employer, a subsidiary entity at least 51 percent of the ownership interests of which are owned by the Employer is deemed an "Affiliate" of the Employer.

"Authority" means the Arizona Commerce Authority.

"CEO" means as the term "Chief Executive Officer" is defined under A.R.S. § 41-1501(3) and may also include the CEO's designee.

"Cluster Industry" means, concentrations of firms across several industries that share common economic foundation needs.

"Consortium" means:

a) A group of at least two Employers (excluding any contracted Qualified Training Provider) that combine efforts to meet common training needs according to a specific occupational category or current industrial trend; or
b) A professional or trade association or a joint apprenticeship training committee that is composed of a majority of businesses eligible to participate under the Program; or
c) A small business development center encompassing a partnership between the State's ten community college districts and the U.S. Small Business Administration.

"EASY" means the Authority's "Electronic Application System" used for transmitting documentation to the Authority electronically.

"Employee" means a full-time, permanent (non-seasonal, non-contract) Arizona employee (including an employee of a professional employment organization) who performs services (in an employment position in respect to which the normal work week is at least 35 hours) for an Employer that applies for or otherwise obtains a Program grant and for whom such Employer is required to remit Federal Insurance Contributions Act (FICA) taxes. The term "Employee," in the context of a Small Employer, includes an Owner who otherwise qualifies as an "Employee." An Owner in the context of any other Employer is not considered an "Employee" irrespective of whether such Owner otherwise qualifies as an "Employee."

"Employer" means an entity (and any one or more Affiliates) that:

a) Have at least one business location in Arizona;

b) Are not public agencies as defined under A.R.S. § 11-951; and
c) Are not public service corporations as defined under Arizona Constitution Article 15, Section 2.

Any reference in these Rules to the term "Employer" shall also include, as the context indicates, a Consortium that is awarded a Program grant.

"Equipment" means the following items the value of which for purposes of the Employer Match will be prorated during the time used for training under a grant:
a) Machinery that has verifiable annual depreciation; or
b) Computer hardware or software purchased after a training plan start date.

"Employer Match" means costs incurred in meeting the Employer's contribution requirement and used in determining the total grant amount.

"Export-Oriented Business" means an Employer that derives more than fifty percent of its gross receipts from sales outside of the State of Arizona.

"Grantee" means an Employer who has entered into a Grant Agreement.

"Grant Agreement" means the agreement between the Employer and the Authority setting forth the terms of a Program grant.

"Headquarters" means an Employer's principal central administrative office where primary headquarters functions and services are performed, including financial, personnel, administrative, legal, planning and similar business functions and services.

"Incumbent Employees" means an Employer's Employees as of the date of a Program grant application (and successors to such Employees) as well as the Employer's Employees who during a Training Plan period fill employment positions that existed as of the date of a Program grant application but which such employment positions were unfilled as of such date.

"Mandatory Training" means training required in order to prepare an employee to fulfill job duties and adhere to company policies, including, for example, new hire orientation in which the employer explains company policies.

"Net New Jobs" means in the context of New Employee training:
a) The number of New Employees that is in excess of the number of existing Arizona Employees (if any) specified on the Program grant application or otherwise established at the time of the Grant Agreement; or
b) The number of Employees that is in excess of the number of Arizona Employees before any layoffs or force reductions occurring during the 12-month period preceding the date of a Program grant application.

"New Employees" means Employees of a new or expanding business who are employed in Arizona by an Employer in Net New Jobs following submission of a Program grant application.

"On-The-Job Training" means training provided to a registered apprentice participating in a program registered with the Arizona Apprenticeship Office.

"Owner" means the owner of an equity interest in the Employer.

"Professional Services" means services an individual, business or organization provides to an employer to assess, review, design, develop, customize and update an employer's business processes for a fee.

"Program" means the Arizona Job Training Program established pursuant to A.R.S. § 41-1544.

“Qualified Training Provider” means an educational institution or an individual or entity has a written statement from the Employer attesting to the trainer's competence to provide training for job-specific skills. The term “Qualified Training Provider” may include a Grantee.

"Qualifying Wage Rate" means as described in Section 2(B)(1).

“Research and Development Facility” means an Employer if more than fifty per cent of the Employer’s business activity is qualifying research and development as defined under section 41 of the Internal Revenue Code.

"Rural Employer" means an Employer located within a “rural area” as defined under A.R.S. § 41-1544(J)(1).

“Skill Certificate” means an educational credit, certification or award issued by a Qualified Training Provider in recognition of an employee attaining a measurable technical or occupational skill necessary to gain employment or advancement within the employee’s occupation or profession.

"Small Employer" means an Employer that, as of date of submission of a Program grant application, employs fewer than one hundred employees at all locations within and without Arizona.

“Substantially Complete” means, in respect to a Program grant application, that the application materials are sufficient for the Authority to determine the applicant’s eligibility and the amount of the requested grant.

“Target Industry” means the industries targeted by the Authority, including Aerospace & Defense, Technology & Innovation, Advanced Manufacturing, Bioscience & Health Care, Advanced Business Services and Film & Digital Media

"Training Plan" means the information submitted to the Authority relating to the Employees proposed to be trained and the nature, timing and cost of the proposed training.

"Urban Employer" means an Employer that is not a Rural Employer.

Schedule 1 Allowable Training Expenses, Permissible Employer Match Contributions
Schedule 2 Criteria for Evaluating Net New Training Applications

…

Schedule 1
Allowable Training Expenses, Permissible Employer Match Contributions

1. Program grant funds may be paid to reimburse only allowable training expenses. The following are allowable training expenses:

    a. Charges assessed by unaffiliated Qualified Training Providers;
    b. Training material purchases and productions;
    c. External training facility rental expenses not to exceed 25 percent of a total grant award;
    d. Hourly wages of in-house Arizona Qualified Training Providers for allowable in-house training;
    e. On-The-Job Training costs not to exceed 25 percent of the base wage of an Employer's employee who provides On-The-Job Training to a registered apprentice under a grant;
    f. Travel costs (exclusive of food and beverage) not to exceed five percent of a total grant award;
    g. Other expenses that, in the Authority's determination, comport with the intent of the Program with respect to the use of grant funds.

2. The following, without limitation, are not allowable training expenses:

    a. Any expense that is not incurred directly with an instructional cost;
    b. Trainee wages or fringe benefits including tuition reimbursement;
    c. Trainer fringe benefits;
    d. Employer costs to complete a Program application or manage a Program grant;
    e. Expenses for recruiting an Employee;
    f. Training expenses for an Employer officer or partner, except for an Owner in the context of a Small Employer;
    g. A signing bonus;
    h. Food and beverage expenses;
    i. Expenses for relocating an employee;
    j. Professional Services;
    k. Expenses for assessing the training needs of an Employer's employees;
    l. Drug or other testing for employee screening or prescreening purposes;
    m. Conference, online training, or seminar expenses not resulting in a Skill Certificate;
    n. Trade show expenses;
    o. On-The-Job training costs for an Employee that is not a registered apprentice;
    p. Expenses associated with staff meetings that are not exclusively training sessions, or with onboarding activities, such as orientation classes;
    q. Regulatory continuing education training required to retain an Employee's certification or degree;
    r. Training that is not specifically related to the requirements of the position for which training is provided;
    s. Any expense that is not incurred and paid for directly by the Employer with the exception of travel costs paid by an Employee and reimbursed by the Employer; or
    t. Training that is mandated by state or federal law.

Schedule 1
Allowable Training Expenses, Permissible Employer Match Contributions

3. An Employer receiving Program funding must provide at least 25 percent of the cost of training in the case of New Employee training or at least 50 percent of the cost of training in the case of Incumbent Employee training. These amounts are referred to as the Employer Match. The following are expenditures (including in-kind expenditures) that qualify as an Employer Match if paid or contributed by the Employer:

    a. Allowable training expenses set forth in Section 1 of this Schedule 1 the costs of which are not reimbursed by Program funds;
    b. The pro-rated value of Equipment used in training activities;
    c. The pro-rated value of space at an Employer's place of business used during training activities;
    d. Employee-trainee wages (excluding fringe benefits) paid during training by a Small Employer or a Rural Employer;
    e. Federally or state mandated programs, training, or annual recertification, such as EEO or OSHA.

Schedule 2

Criteria for Evaluating Net New Training Applications

New Employee training applications will be evaluated based on the following factors:

1. Quality of proposed training program, taking into consideration the following:
    a. Higher priority will be given for the following types of training:
        i. Training resulting in the employee-trainee receiving a Skill Certificate reflective of value for other employers
        ii. Training resulting in wage increases
        iii. Training for advanced jobs skills, such as, without limitation, Lean manufacturing; 6 Sigma; Advanced information technology skills such as SQL, HTML and Java; Advanced financial analysis; Quality management; and Welding
    b. Lower priority will be given for the following types of training:
        i. In-house training unless resulting in clearly measurable technical or occupational skills
        ii. Conferences, seminars, and online training unless resulting in a Skill Certificate
        iii. Training for basic job skills, such as, without limitation, Microsoft Office or comparable proficiencies, customer-service, and time management
    c. For training that utilizes third-party training vendors, lower priority will be given to training that utilizes out-of-state vendors, with the degree of priority adjustment corresponding directly to the extent to which the budget is dedicated to out-of-state vendor costs
    d. Higher priority will be given for training budgets in which a greater percentage of costs is dedicated to actual training expenses (as opposed to incidental expenses, such as travel and facility rentals)

2. Efficient use of state training dollars, with consideration of the following:
    a. Employer match percentage
    b. Grant amount per Net New Employee to be trained
    c. Other job training resources leveraged, such as community college training
    d. Overall economic impact to the state

3. Business, Industry or Facility, with priority for the following:
    a. A Small Employer
    b. A Rural Employer
    c. An Export-Oriented Business or operations
    d. Headquarters operations
    e. A Research and Development Facility
    f. A business in a Target Industry
    g. A business in a Cluster Industry
    h. A business undergoing economic conversion
    i. A business increasing economic diversity

4. The quality of the Net New Jobs, with consideration of the following:
    a. Payment of average wages in excess of the Qualifying Wage Rate
    b. Health insurance coverage and percentage paid by employer-company
    c. Other employment–related benefits provided

5. Efforts made to employ dislocated workers (as defined under the Workforce Innovation and

Opportunity Act), the chronically unemployed (those experiencing long-term unemployment, generally considered to be six months or longer) and other special employee populations, including persons with disabilities, veterans, and individuals with criminal records.

STATE OF ARIZONA

FY 2021

Appropriations Report

July 2020

JLBC

Proposition 123 Triggers

Economic Downturn

Proposition 123 allows the state to temporarily suspend future inflation increases during periods of economic slowdown if:

- Sales tax revenue and employment both grow more than 1% but less than 2% in the prior year [if only one factor falls into the 1-2% range, there is no suspension].
- It requires this suspension of inflation adjustments if sales tax revenue and employment both grow less than 1%.

Since 1992, economic conditions would have met the 1-2% threshold in 1 year and would have met the 1% threshold in 3 years. Since Proposition 123 was enacted, the state exceeded the threshold every year.

Lower Trust Fund Balance

The proposition:

- Allows the state to reduce the 6.9% distribution rate to no less than 2.5% for the following fiscal year if the 5-year average balance of the State Land Trust Permanent Fund fell below the average balance of the preceding 5 years.

The criteria for reducing the distribution rate would not have been met in the last 10 years, as no 5-year period since 2001 has averaged a lower balance than the preceding 5 years.

K-12 Percent of Budget

Beginning in FY 2026, the proposition:

- Allows the suspension of the annual inflation adjustment and a reduction in K-12 funding for the next fiscal year equal to the current year inflation adjustment if K-12 spending surpasses 49% of the total state General Fund appropriations.
- If K-12 spending surpasses 50%, allows the state to suspend the annual inflation adjustment and reduce K-12 funding for the next fiscal year by twice the current year inflation amount.

For FY 2020, budgeted K-12 spending constitutes approximately 43.9% of total state General Fund appropriations. *(Please see the FY 2017 Appropriations Report for more information on Proposition 123.)*

Aggregate Expenditure Limit

Article IX, Section 21 of the State Constitution establishes an Aggregate Expenditure Limit (AEL) that caps spending for all school districts combined at the FY 1980 statewide level adjusted for subsequent statewide enrollment growth and inflation plus 10%. The AEL does not apply to exempted items like overrides, bonding and Proposition 301 funding or to charter schools.

Pursuant to A.R.S. § 15-911B, the Department of Education computed in November 2019 that budgeted expenditures for school districts collectively for FY 2020 were $(49.3) million below the AEL. The difference for FY 2019 was $(317.3) million.

The gap between school district's budgeted spending and the AEL decreased in FY 2020 because funding for teacher pay raises and Additional Assistance restorations caused district spending statewide to grow faster than enrollment and inflation combined for that year. This is expected to occur again in FY 2021 due to the addition of $124,500,000 from the General Fund for teacher pay raises in FY 2021. As a result, it appears likely that school district expenditures statewide are likely to exceed the AEL for FY 2021. The precise amount will not be known definitively until November 1, 2020, however, when the department is required to report school districts' AEL status for FY 2021 pursuant to A.R.S. § 15-911B.

A.R.S. § 15-911C2 allows the Legislature to authorize statewide school district spending above the AEL for that year with a two-thirds majority vote in both the House of Representatives and Senate. A permanent increase in the AEL would require a voter-approved change to the State Constitution.

Proposition 301

Proposition 301, which was passed by voters in November 2000, amended A.R.S. § 42-5010 to increase the state Transaction Privilege Tax (TPT) ("sales tax") rate on most purchases from 5% to 5.6% through FY 2021 to generate more funding for public education. It also amended A.R.S. § 42-5029 to prescribe how the new sales tax revenues would be allocated *(see Table 16)*.

Starting in FY 2022, Laws 2018, Chapter 74 extends the additional 0.6% sales tax through June 30, 2041 and redirects to the Classroom Site Fund $64.1 million of 0.6% sales tax monies previously needed for debt service on School Facilities Board bonds authorized by Proposition 301. All other distributions remain unchanged.

ARIZONA
PUBLICITY PAMPHLET

Propositions to be submitted to the
qualified electors of the State of Arizona
at the

GENERAL ELECTION
NOVEMBER 4, 1986

COMPILED AND ISSUED BY

ROSE MOFFORD

Secretary of State

PROPOSITION 101

OFFICIAL TITLE

SENATE CONCURRENT RESOLUTION 1003

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION; PROVIDING FOR ANNUAL INCREASES IN THE AGGREGATE EXPENDITURE LIMITATION FOR SCHOOL DISTRICTS, AND AMENDING ARTICLE IX, SECTION 21, CONSTITUTION OF ARIZONA.

TEXT OF PROPOSED AMENDMENT

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. The following amendment of article IX, section 21, Constitution of Arizona, is proposed to become valid when approved by a majority of the qualified electors voting thereon and upon proclamation of the governor:

21. Expenditure limitation; school districts and community college districts; adjustments; reporting

Section 21. (1) The economic estimates commission shall determine and publish prior to April 1 of each year the expenditure limitation for the following fiscal year for each community college district. The expenditure limitations shall be determined by adjusting the amount of expenditures of local revenues for each such district for fiscal year 1979-1980 to reflect the changes in the student population of each district and the cost of living. The governing board of any community college district shall not authorize expenditures of local revenues in excess of the limitation prescribed in this section, except in the manner provided by law.

(2) The economic estimates commission shall determine and publish prior to May 1 of each year the aggregate expenditure limitation for all school districts for the following fiscal year. The aggregate expenditure limitation shall be determined by adjusting the total amount of expenditures of local revenues for all school districts for fiscal year 1979-1980 to reflect the changes in student population in the school districts and the cost of living, AND MULTIPLYING THE RESULT BY 1.10. The aggregate expenditures of local revenues for all school districts shall not exceed the limitation prescribed in this section, except as provided in subsection (3) of this section.

(3) Expenditures in excess of the limitation determined pursuant to subsection (2) of this section may be authorized for a single fiscal year upon affirmative vote of two-thirds of the membership of each house of the legislature.

(4) As used in this section:

(a) "Cost of living" means either:

(i) The price of goods and services as measured by the implicit price deflator for the gross national product or its successor as reported by the United States department of commerce, or its successor agency.

(ii) A different measure or index of the cost of living adopted at the direction of the legislature, by concurrent resolution, upon affirmative vote of two-thirds of the membership of each house of the legislature. Such measure or index shall apply for subsequent fiscal years, except it shall not apply for the fiscal year following the adoption of such measure or index if the measure or index is adopted after March 1 of the preceding fiscal year.

(b) "Expenditure" means any amounts budgeted to be paid from local revenues as prescribed by law.

(c) "Local revenues" includes all monies, revenues, funds, property and receipts of any kind whatsoever received by or for the account of a school or community college district or any of its agencies, departments, offices, boards, commissions, authorities, councils and institutions, except:

(i) Any amounts or property received from the issuance or incurrence of bonds, or other lawful long-term obligations issued or incurred for a specific purpose, or any amounts or property collected or segregated to make payments or deposits required by a contract concerning such bonds or obligations. For the purpose of this subdivision long-term obligations shall not include warrants issued in the ordinary course of operation or registered for payment, by a political subdivision.

(ii) Any amounts or property received as payment of dividends and interest, or any gain on the sale or redemption of investment securities, the purchase of which is authorized by law.

(iii) Any amounts or property received by a school or community college district in the capacity of trustee, custodian or agent.

(iv) Any amounts received as grants and aid of any type received from the federal government or any of its agencies except school assistance in federally affected areas.

(v) Any amounts or property received as grants, gifts, aid or contributions of any type except amounts received directly or indirectly in lieu of taxes received directly or indirectly from any private agency or organization, or any individual.

(vi) Any amounts received from the state for the purpose of purchasing land, buildings or improvements or constructing buildings or improvements.

(vii) Any amounts received pursuant to a transfer during a fiscal year from another agency, department, office, board, commission, authority, council or institution of the same community college or school district which were included as local revenues for such fiscal year or which are excluded from local revenue under other provisions of this subsection.

(viii) Any amounts or property accumulated by a community college district for the purpose of purchasing land, buildings or improvements or constructing buildings or improvements.

(ix) Any amounts received in return for goods or services pursuant to a contract with another political subdivision, school district, community college district or the state and expended by the other political subdivision, school district, community college district or the state pursuant to the expenditure limitation in effect when the amounts are expended by the other political subdivision, school district, community college district or the state.

(x) Any amounts received as tuition or fees directly or indirectly from any public or private agency or organization or any individual.

(xi) Any ad valorem taxes received pursuant to an election to exceed the limitation prescribed by section 19 of this article or for the purposes of funding expenditures in excess of the expenditure limitations prescribed by subsection (7) of this section.

(xii) Any amounts received during a fiscal year as refunds, reimbursements or other recoveries of amounts expended which were applied against the expenditure limitation for such fiscal year or which were excluded from local revenues under other provisions of this subsection.

(d) For the purpose of subsection (2) of this section, the following items are also excluded from local revenues:

(i) Any amounts received as the proceeds from the sale, lease or rental of school property as authorized by law.

(ii) Any amounts received from the capital levy as authorized by law.

(iii) Any amounts received from the acquisition, operation, or maintenance of school services of a commercial nature which are entirely or predominantly self-supporting.

(iv) Any amounts received for the purpose of funding expenditures authorized in the event of destruction of or damage to the facilities of a school district as authorized by law.

(e) "Student population" means the number of actual, full-time or the equivalent of actual full-time students enrolled in the school district or community college district determined in a manner prescribed by law.

(5) The economic estimates commission shall adjust the amount of expenditures of local revenues in fiscal year 1979-1980, as used to determine the expenditure limitation pursuant to subsections (1) and (2) of this section, to reflect subsequent transfers of all or any part of the cost of providing a governmental function, in a manner prescribed by law. The adjustment provided for in this subsection shall be used in determining the expenditure limitation pursuant to subsections (1) and (2) of this section beginning with the fiscal year immediately following the transfer.

(6) The economic estimates commission shall adjust the amount of expenditures of local revenues in fiscal year 1979-1980, as used to determine the expenditure limitation pursuant to subsection (1) of this section, to reflect any subsequent annexation, creation of a new district, consolidation or change in the boundaries of a district, in a manner prescribed by law. The adjustment provided for in this subsection shall be used in determining the expenditure limitation pursuant to subsection (1) of this section beginning with the fiscal year immediately following the annexation, creation of a new district, consolidation or change in the boundaries of a district.

(7) The legislature shall establish by law expenditure limitations for each school district beginning with the fiscal year beginning July 1, 1980. Expenditures by a school district in excess of such an expenditure limitation must be approved by a majority of the electors voting on the excess expenditures.

(8) The legislature shall establish by law a uniform reporting system for districts to insure compliance with this section. The legislature shall establish by law sanctions and penalties for failure to comply with this section.

(9) This section is not effective for any community college district until the fiscal year beginning July 1, 1981.

(10) Subsections (2), (3), (5) and (6) of this section do not apply to school districts until the fiscal year beginning July 1, 1981.

FINAL VOTE CAST BY THE LEGISLATURE ON SCR 1003
(PROPOSITION 101)

House—Ayes, 45	Senate—Ayes, 19
Nays, 12	Nays, 8
Not Voting, 3	Not Voting, 3

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. section 19-124)

Proposition 101 would amend article IX, section 21 of the State Constitution to raise the limit on school district spending by 10%. In 1980 the voters approved Proposition 109 which established a limit on the amount school districts could spend. The spending limit for school districts restricts total spending by all districts in Arizona rather than being a restriction on individual school districts. Each year a new limit is calculated by starting with the base limit established for fiscal year 1979-1980. This base limit is adjusted to reflect the changes between the base year and the relevant year in student population and cost of living. After the base limit is adjusted, Proposition 101 would further adjust the new limit by increasing it by 10%.

In fiscal year 1981-1982 the constitutional limit on total school district spending was $1.128 billion and school districts budgeted $1.111 billion for spending. In fiscal year 1985-1986 the constitutional limit on total school district spending was $1.560 billion and school districts budgeted $1.553 billion for spending.

If Proposition 101 passes the constitutional limit on total school district spending in fiscal year 1987-1988 is estimated to increase to $1.910 billion. If Proposition 101 does not pass the current constitutional limit on total school district spending in fiscal year 1987-1988 is estimated to increase to $1.736 billion.

Proposition 101 only changes the total spending limit. Authority by state law is necessary before individual school districts can budget any additional money based on the increase. The Legislature did pass legislation this year which only becomes effective on passage of this Proposition to provide for use of some of the increase for statewide participation by school districts in a career ladder program for teachers and additional money for teacher salaries.

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 101

In 1980 voters took the first step by placing a limit on spending by school districts. However, because of a number of economic, legal and other factors, the limit is now unrealistically low. Expenditures by all school districts in this state for the last fiscal year were only ½ of 1% below the constitutional limit. Unless the limit is changed, school districts will find it difficult to establish needed educational programs and school districts may have to cut back on budgets and programs they have already adopted for the current fiscal year.

The spending limit approved by the voters in 1980 only took into account general increases in student population and the cost of living, therefore limiting the schools in the 1980's to the old cost factors and programs of the 1970's. Since the limit was set, national and state reviews of educational problems have identified needs for new and better existing programs such as an emphasis on early grades, math and science and job training skills. Investments in better educational programs now may save tax money in the future that would otherwise have to be spent for welfare and prisons as a result of a poorly educated population.

The Legislature has encouraged school districts to start some badly needed programs but can do no more because of the constitutional limit on school spending. We need to raise teachers' salaries to attract and keep well qualified teachers who are now going into better paying professions. We must increase the constitutional limit so that we can better educate our children.

An investment in education is an investment in our future.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 101

In 1980 Arizona voters overwhelmingly approved controlling spending by school districts by placing a limit on the spending. School districts require more property taxes than any other level of government in this state. In addition to these property taxes, the state also spends over one billion dollars on education. Raising the limit may raise your taxes.

The state spends more than 60% of its budget for education and this Proposition allows more spending of both state and local tax money by school districts. We can only afford so much tax money for education. More money does not necessarily mean better schools. The school districts can manage their money better and must learn to live within their means, just like we have to do.

The constitutional limit on school spending approved by the voters in 1980 took into account increases in student population and increases in the cost of living. The limit has been in effect only five years, and the school districts have never gone over the limit. There simply is no reason or need to increase that limit now. If school districts wish to start new programs or expand old ones, they can find the money by removing old programs that don't work.

A limit is a limit. School districts want to ignore it. The voters set a limit on school district spending to end government's blank check drawn on people's earnings and to reduce the pressure on school districts from special interest groups and employees to fund new programs, expand existing programs and increase salaries. If this Proposition passes, teachers' associations will have won the battle and laws will become effective which allow school districts to spend the extra money to increase teachers' salaries.

ARGUMENT "FOR" PROPOSITION 101

STATEMENT IN FAVOR OF INCREASING THE CONSTITUTIONAL AGGREGATE EXPENDITURE LIMIT

As an organization which addresses children's educational needs, we urge a "yes" vote on Proposition 101.

Proposition 101 would permit an increase in the Constitutional Aggregate Spending Limit. This limit was created in 1980 and impedes the combined spending of all school districts. When the combined spending rises above the constitutional limit, the State Board of Education is required by law to force all school districts to reduce their budgets by an amount set by the State Board.

School district expenses include cost of materials, supplies, utilities, insurance, and salaries. The rapid rise in these costs over the past five years is causing the combined spending limit to be reached much faster than originally expected. By approving an increase in this limit, school districts will be better able to meet necessary expenses, improve the quality of teaching and provide salaries that will attract and keep the brightest and best teachers for our schools.

With the approval of Proposition 101, school districts will be able to continue vital educational programs, including arts, athletics, band and other extra curricular activities. Our students deserve a quality, well-rounded education.

In order to improve our educational standards, the combined spending limit must be raised to recognize current economic realities and to enable us to provide our students a quality education in the years ahead.

Your "yes" vote for Proposition 101 will create the constitutional authority needed to address these issues today.

Dr. Elizabeth L. Toth, Executive Director
Greater Phoenix Educational Management Council

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

There have been few propositons offered for voter approval more important for the future of Arizona than Proposition 101. The future of Arizona will be in the hands of today's students, and Arizona must put forth its maximum effort to achieve excellence in education. Arizona's future lifestyle, economy, and achievements are dependent on the quality of our public education system.

Proposition 101 will provide the capacity for funding for bold advances in education. It will permit the state to retain and attract more and better educational leaders, teachers, and support personnel. It will permit Arizona to retain its best educators for the students of the state instead of losing them to more financially rewarding careers. It will permit our children to have the best in textbooks, supplies, and educational programs designed for the future. Proposition 101 will allow today's children to more easily reach their potential.

Proposition 101 is an investment in the future of Arizona.
VOTE YES!

Raymond S. Kellis, President
Arizona School Adminstrators, Inc.

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

Local school boards believe that Arizona deserves the best schools in the country. We can have them only if the current Aggregate Spending Limit, which sets school funding at 1979 levels, is adjusted upward. We can have the best education system in the country if Arizona voters make education their number one priority by voting yes on Proposition 101.

School boards want to maintain and expand programs that prepare students for their roles in Arizona tomorrow—programs like basic literacy, special help for primary-grade children, computer familiarity, free textbooks, and substance abuse prevention. Intensive efforts are also required to reduce the drop-out rates in our schools. To ensure that Arizona students take their rightful places in our state as responsible and well-informed citizens and workers, school boards must address their needs now.

We can do that, in part, by hiring and keeping the best teachers available. However, we, like school districts across the country, face an impending shortage of qualified teachers. Arizona districts must compete for new teachers with states that are contributing ever greater amounts for beginning teacher salaries. In a very short time, our recruitment efforts simply won't be competitive, because the Aggregate Spending Limit keeps Arizona's Legislature from substantially improving salaries for both beginning teachers as well as for high performing experienced teachers.

Voting yes on Proposition 101 will allow local school boards to do a better job of readying today's youth for the future. Make education our state's number one priority. Vote yes on Proposition 101.

Virginia Tinsley, President
Arizona School Boards Association

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

Our public schools need room to grow. Voting "yes" on Proposition 101 gives Arizona's education system the financial "breathing room" it needs to meet all students' needs and our state's future employment requirements. A healthy economy depends on a healthy system of public education. In fact, Arizona can only be as good as its schools. Good schools must be able to focus on developing basic skills in its youngest students, to maintain safe and well-disciplined learning environments for all children, to reward outstanding teachers, to prevent and reduce student drop-outs, and to hire enthusiastic, dedicated new teachers. Our schools can be as good as they're meant to be if the current Aggregate Spending Limit is revised. That Limit forces our schools to be funded at 1979 levels. Proposition 101 provides the opportunity for Arizona education to look forward, instead of backward, and to more adequately prepare today's young people for productive lives in the 21st century. That's what education is all about—preparing for the future. Vote yes for today's youth and their tomorrows. Vote yes on Proposition 101.

Mary Belle McCorkle, Ed. D.
President
Tucson Administrators, Inc.

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

If the State of Arizona is to provide educational improvements in the coming years, Proposition 101 must be approved. There currently is an Arizona law that limits spending for education to a certain percentage of Arizona's total expenditure formula. The only way now that the limit can be increased is through inflation or increased student enrollment. This means that schools can only remain at status quo.

Arizona deserves better for its children. Proposition 101 will increase by 10 percent the ability of the State to support education, but even this small upward adjustment can make a big difference for our children.

More and better teachers can be hired. We can pay more attractive salaries. Important programs for our children can be expanded, such as special attention to the early learning needs of students in Kindergarten - third grades, dropout prevention, and computer literacy. Such benefits as free textbooks, safe facilities, and adequate teaching supplies can be ensured. Without approval of Proposition 101, these same programs may be reduced or even eliminated.

Proposition 101 has the support of Governor Babbitt. It has the support of the Superintendent of Public Instruction, Carolyn Warner. It has the support of many Arizona business people because they know that the most important part of any business is the employee. And most important, it has the support of the people who have committed their lives to education—school board members, school administrators, and teachers.

Join all of us who support a strong public education system in voting Yes for Proposition 101.

Dennis Van Roekel, President
Arizona Education Association

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

As citizens of Arizona who are actively involved in our children's education and knowledgeable about our public schools, we urge you to approve Proposition 101.

Education is the only public service that so rigorously demands constant attention to the future if it is to be successful. In meeting the needs of children today, educators must anticipate their needs of tomorrow. As parents, we look ahead, too. We ask if the State is adequately supporting our schools today to ensure that our children will have the skills and knowledge they'll need tomorrow. Under this state's present constitutional spending limitation for education, the answer is no. That limit ties school funding to the past, not the future, but Proposition 101 will allow our schools to move forward and, thus, our children as well.

If we want the best teachers for our children, we must be able to pay them salaries that are competitive with those of business and industry. If we want to make sure that our children master the basic skills, we must see that they receive concentrated attention. If we want improved discipline in our schools, we must first reduce classroom overcrowding. If we want our children to stay in school, then we must expect our schools to offer educational programs that have staying power.

While school districts and the State Legislature try to fulfill these expectations, they have gone as far as they can until Proposition 101 is approved. The Legislature has concurred with Governor Babbit by putting this proposition on the ballot. Every school district in the state supports it. Tell them you agree, as we in the PTA have, that education in Arizona must be allowed to move forward. Tell them you agree, as we are, by voting Yes on Proposition 101.

Naida Rector, President
Arizona Congress of Parents and Teachers

ARGUMENT "FOR" PROPOSITION 101

PROPOSITION 101 PRO STATEMENT

I'm voting Yes on Proposition 101 because the students in our public schools deserve a stronger commitment from us to their education. Amending the Aggregate Expenditure Limit for schools is a no-cost way to demonstrate our belief that upgrading education is the key to the continued vitality of our state.

Employers deserve the assurance that when they hire graduates of Arizona schools they are hiring literate, responsible people. Keeping our state economy healthy requires our schools to produce graduates who are ready and able to work or to continue their education.

To offer such assurance means that our schools have to do an even better job than they are now. Fortunately, those who educate our children do want to do an even better job of it. They want classes that are small enough to provide personal attention by the teacher and to reduce discipline problems. (Only seven states have more crowded classrooms than Arizona.) They want to make high school available to more students by continuing to provide free textbooks. They want to give young children the best start possible in school. They want to attract and keep the most able teachers.

Proposition 101 gives us the chance to tell educators that we're willing to back their efforts to improve our schools, that we know the quality of our future depends on the quality of their work with our children now.

Vote yes for a strong educational system. Vote Yes for Proposition 101.

State Senator Alan J. Stephens, District 6

ARGUMENT "AGAINST" PROPOSITION 101

Vote NO on Proposition 101 - WHY?

Proposition 101 has several flaws that require one to reject its validity. For example:

1. One major problem related to this proposition is its tie to a major teaching philosophy "Mastery Learning" and "Mastery Teaching" that has produced a nation of many ineffective teachers and poor readers. SB 1292 and SB 1384 become effective if Proposition 101 passes. Both bills are tied to

this proposition and deal with merit pay and teacher evaluation. The teacher evaluations now being promoted in Arizona deal with the Mastery Learning, Master Teacher philosophy. Noted researchers and educators call these methods and theories "fifty years of barren results in education."

2. The request for expenditure was a political act and was made without the basis of a proper needs assessment. It has roots in the false logic of "more money means better education" when in fact it probably means more of the same inadequate education with a higher price tag.

Ann Herzer, M.A.

ARGUMENT "AGAINST" PROPOSITION 101

In 1980 the voters of Arizona approved a tax reform package. Primarily it dealt with the funding of education and the equalization of funding between rich and poor school districts. Also it set an aggregate spending limit on all schools which could only be increased by two factors, inflation and higher student enrollment. It has worked as planned.

Proposition 101 is not the first attempt to bypass the tax reform package, but it is certainly the largest. It would raise the aggregate limit by 10% or $174 million. The establishment claims that additional funds are needed to raise teachers' salaries to the national average. According to the National Center for Education Information in its 1984 survey recently released, Arizona's teachers are right at the national average. Further, that survey found that teachers in public and private schools preferred their 9 or 10 month contracts to 12 month contracts offering more money.

Will higher salaries do a better job of educating our children? Two thirds of the state budget already goes for education. We taxpayers have been supplying more money each year for the past twenty years, yet the quality of education has gone down. Obviously more money is not the answer. Making better use of that money might do the job. Reducing bloated high-salaried administrative staffs, eliminating some of the more frivolous courses and cutting back on the expensive sports programs are some viable alternatives.

The Citizens Tax Committee urges you to vote "NO" on Proposition 101. It is not the answer to the problems of education in Arizona. Proposition 101 can only raise your taxes.

Citizens Tax Committee, Inc.

Roy Lietz
President

Carl Dry
Executive Director

William Turner
Secretary

Paul Wedepohl
Treasurer

ARGUMENT "AGAINST" PROPOSITION 101

In 1980, the voters of Arizona overwhelmingly approved placing a constitutional spending limit on schools. It was a very liberal limit and took into consideration both inflation and student growth. Now, barely six years later, the teachers' union wants to substantially raise that limit and increase our taxes.

The citizens of Arizona have been more than generous in their support of public schools. From fiscal year 1979-80 through fiscal year 1984-85, student population increased by only 2.8% yet maintenance and operation expenditures increased by 63.1% according to financial figures from the Arizona Department of Education.

An increase in the aggregate spending limit is not necessary as patrons of a school district have the ability under present law to approve an override election when they wish to provide additional support for their school district. Instead, passage of Proposition 101 will increase the budget capacity of our school systems by more than 350 million dollars in the first two years alone.

Without the basic educational reforms, money alone will not improve our schools. If you wish to pay substantially higher taxes with no improvement in student achievement, you should support Proposition 101. If you do not want higher taxes, you should vote NO.

Representative Jim Skelly
Chairman, House Judiciary Committee

ARGUMENT "AGAINST" PROPOSITION 101

Passage of this proposition will only result in higher taxes. There's no assurance that it will improve the quality of education offered by our public schools.

Right now over half of our state budget goes to education and about half of our local property taxes goes to our public schools.

This proposition is based on the false premise that more money will improve our public schools. The record clearly shows that the more money we pour into our public school system the poorer the quality of education.

Our public schools don't need more money. What they need to do is make better use of the money they now get. That could be done readily by cutting the fat from administrative overhead and reducing the number of fluff and trivial courses now offered by our schools.

Businesses have been doing that for years now and have found that such cuts invariably lead to improved performance. There's good reason to believe that if our public schools do the same they will get the same favorable results.

Most of the increased tax money from Proposition 101 will go to increasing state aid for raising teacher pay. Teacher pay is properly a local function. The state should stay out of that area. Besides, Arizona teachers are fairly well paid. For 1985-1986, the average Arizona teacher pay was $24,680 which comes to $137 per day for a 180-day work year.

In short, passage of the proposition will result in higher taxes with no assurance that the quality of public education will be improved.

I urge a NO vote on Proposition 101.

Robert W. Samz, Ph.D.

BALLOT FORMAT

PROPOSITION 101

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURE

OFFICIAL TITLE

SENATE CONCURRENT RESOLUTION 1003

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION; PROVIDING FOR ANNUAL INCREASES IN THE AGGREGATE EXPENDITURE LIMITATION FOR SCHOOL DISTRICTS, AND AMENDING ARTICLE IX, SECTION 21, CONSTITUTION OF ARIZONA.

DESCRIPTIVE TITLE

AMENDING ARIZONA CONSTITUTION PROVIDING FOR AN INCREASE IN SCHOOL EXPENDITURE LIMITATIONS BY 10 PERCENT.

PROPOSITION 101

A "yes" vote shall have the effect of raising school district spending limits by 10 percent.	YES →
A "no" vote shall have the effect of continuing current limitations on school district spending.	NO →

BALLOT PROPOSITIONS

VOTERS:

Check this out!

STATE OF ARIZONA

GENERAL ELECTION
NOVEMBER 3, 1992

Compiled by the Secretary of State

PROPOSITION 108

OFFICIAL TITLE

AN INITIATIVE MEASURE

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 22; RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

The following amendment of Article IX, Constitution of Arizona, by adding Section 22, is proposed to become valid when approved by a majority of the qualified electors voting thereon and on proclamation of the Governor:

Section 22. Vote required to increase state revenues; application; exceptions

(A) 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. If the act receives such an affirmative vote, it becomes effective immediately on the signature of the governor as provided by Article IV, Part 1, Section 1. If the governor vetoes the measure, it shall not become effective unless it is approved by an affirmative vote of three-fourths of the members of each house of the legislature.

(B) 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 lax 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 administrative 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.

(C) This section does not apply to:

1. The effects of inflation, increasing assessed valuation or any other similar effect that increases state revenue but in not caused by an affirmative act of the legislature.
2. Fees and assessments that are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency.
3. Taxes, fees or assessments that are imposed by counties, cities, towns and other political subdivisions of this state.

(D) Each act to which this section applies shall include a separate provision describing the requirements for enactment prescribed by this section.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. section 19–124)

Proposition 108 would amend the State Constitution to require a two-thirds vote in each House of the Legislature to enact a net increase in state revenue through (1) enacting any new or increased tax or statutory fee, (2) reducing or eliminating any exemption or credit on a tax or fee or (3) making any change in the allocation of tax revenues among the state, counties and cities. If such a measure were passed and signed by

the Governor, it would be effective immediately. If the governor vetoes a measure increasing state revenues, it would not become effective unless the Legislature overrides the veto by at least a three-fourths vote in each House of the Legislature. Currently it is possible to enact these measures on a simple majority vote, with a two-thirds vote required to override a Governor's veto.

Under this proposition revenue measures would have to be enacted by the same process currently required for "emergency" laws, with the same supermajority requirements, becoming effective immediately on enactment and without the opportunity for a referendum on the revenue measure.

This proposition would not affect (1) increased revenues resulting purely from economic effects, such as inflation or increasing assessed valuations, (2) authorized fees and assessments that are not set or limited by law, such as university tuition, or (3) local taxes, fees or assessments.

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 108

Proposition 108 will make it more difficult to raise taxes and will end the string of almost annual tax increases during the past decade.

Some analyses rank Arizona as one of the highest taxed states in the nation. This reputation hinders economic development, discourages businesses from moving to this state, promotes migration of businesses from this state and places a competitive disadvantage on businesses remaining here. Growing government draws economic resources away from productive enterprises. Proposition 108 will help restrain growth in state government.

Tax increases are such a threat to taxpayers that they should be approved only with the agreement of two-thirds of our elected representatives. Proposition 108 ensures a board consensus on the necessity of any future tax increases.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 108

Ideally, taxes are increased only as a last resort in the face of an actual necessity. This proposition will make it extremely difficult for elected representatives to respond to emergency situations, court directives and federal requirements.

Also, when faced with a budget shortfall the Legislature could choose to shift costs to local governments by a simple majority vote. Such shifting could result in increased taxes at the local level.

Requiring a two-thirds vote would reduce the likelihood of meaningful tax reform or equalization among taxpayers because almost any tax reform measure requires raising some taxes while reducing or eliminating others.

Proposition 108 could greatly increase the power of a few legislators who would withhold their support for a tax increase until their own spending priorities are addressed. The more votes that are necessary, the higher the ultimate tax increase. Rather than holding the line on new government revenue, Proposition 108 could result in increased government spending.

If the Legislature enacts a tax increase with a two-thirds vote, Proposition 108 would not allow the voters the right to submit the act to a referendum. Instead, it would become effective immediately with no recourse for citizens.

ARGUMENT "FOR" PROPOSITION 108

The price Arizona farmers and ranchers receive for their agricultural products is determined by agricultural production around the world. We compete for markets with Australia on beef, Brazil on citrus and Europe on milk products. Arizona farmers and ranchers cannot automatically include increased costs, such as taxes, in the price of their product.

The state budget has mushroomed in the past 10 years, from $1.9 billion to over $3.6 billion. When the state's economy began to slow down, lawmakers continued increasing taxes on Arizonans — eight tax increases in the last 10 years.

Farmers and ranchers have had to tighten their belt as agricultural commodity prices continue to be depressed because of increasing world agricultural competition. It is time state government tightens its belt too. Requiring a 2/3 majority vote to increase taxes and fees will make the legislature prioritize spending as the first alternative rather than raising taxes.

Please vote yes on Proposition 108.

Cecil H. Miller, Jr.
President
Arizona Farm Bureau Federation
Phoenix

Andy Kurtz
Executive Secretary
Arizona Farm Bureau Federation
Phoenix

ARGUMENT "FOR" PROPOSITION 108

During the decade of the 1980's, the Arizona legislature enacted a series of tax increases that have moved our state from the position of having a favorable tax climate for growing businesses to one of the highest tax burden states in the nation.

The result of these tax increases is evident in higher unemployment, the loss of jobs to other states and the overall slowing in our state's growth rate.

Often these damaging tax increases were enacted by a slim majority, composed of tax and spend politicians, over the objections of fiscal conservatives and representatives of the business community in our legislature.

Proposition 108 would amend the Arizona Constitution to require a two-thirds majority vote of both houses of the Legislature to enact a net increase in state revenues. Future tax increases will only be possible when there is a clear consensus among all Arizonans of the need for the proposed change.

Although it does not undo the damage of the 1980's and fails to address the companion issue of increasing government spending, Proposition 108 is an important step toward preventing further damage to our state's competitive position.

I urge your support of Proposition 108.

Phil MacDonnell
Candidate for Congress
District 6
Mesa, Arizona

ARGUMENT "FOR" PROPOSITION 108

"For a conservative electorate, the realization comes hard: Arizona has become one of the premier tax and spend states in the nation."

These are the editorial words of Washington Times Insight Magazine, and unfortunately, the new national reputation of Arizona. Arizona has moved from 40th in the nation in the rate of taxation in 1980 to tied for 6th in the nation by 1990. This is the result of eight tax increases in nine years.

Now Arizona voters have a chance to do something about never ending tax increases.

The *It's TIME!* initiative will require a 2/3rds vote in the Legislature before taxes can be raised. This "super-majority" for tax increases idea has been implemented in eight other states, from California to Florida. In each instance taxes have remained lower as a percentage of income than in Arizona.

Some Legislators, who have voted for tax increases, argue that requiring a 2/3rds vote would cause higher taxes or say that defining a "tax increase" is too hard. Clearly they are out of touch with the facts in other states, and with their constituents.

To control never ending tax increases, please vote "YES" on Proposition #108 – the *It's TIME!* initiative.

Brad Gietz
Phoenix

Tim Mooney
Phoenix

It's TIME! Committee: John Shadegg, Chairman; Terry Sarvas, Treasurer

ARGUMENT "FOR" PROPOSITION 108

Nothing has as much of an impact on small business and families as government's ability to tax. In Arizona that power to tax has been liberally exercised to the point where Arizona is not tied for 6th highest in the nation, eclipsing even Massachusetts.

The National Federal of Independent Business/Arizona strongly supports the It's TIME! initiative to require a 2/3rds vote in the Legislature before taxes and fees can be raised again.

NFIB/Arizona's 7,000 plus small business members which employ over 80,000 Arizonans overwhelmingly support the super-majority requirement. When asked, over 87% of our members supported the It's TIME! initiative, and hundreds gathered signatures to place this measure before the voters.

They know that taxes should be raised only after wasteful spending habits are trimmed, and then only if there is a greater consensus of a dire need.

NFIB/Arizona urges support for Proposition 108, the It's TIME! initiative.

Timothy F. Mooney
State Director
National Federation of Independent Business/Arizona
Phoenix, Arizona

Monica Eberhardt
Assistant State Director
National Federation of Independent Business/Arizona
Phoenix, Arizona

ARGUMENT "FOR" PROPOSITION 108

On the heals of seven straight tax increases in a row, the Arizona legislature in 1990 passed the largest tax increase in state history, billing it as a "soak the rich" move that would not affect lower and middle income Arizonans.

Everyone knows that this was not the case. The increase was devastating to the elderly and the middle class and it wreaked havoc on the Arizona economy. A decade of unchecked spending and taxation has transformed our state from what was known as a fiscally sound state, to one of the leading tax and spend states in the nation.

Arizona now ranks number five nationally in total tax bite and third in the nation in rate of tax and spending INCREASES over the last ten years.

Because of this, we are locked in a struggle with neighboring states to attract new jobs to Arizona, and we are losing.

For this reason, the Lincoln Caucus has supported the It's TIME! initiative from the very beginning as a way to bring some fiscal sanity back to Arizona. Raising taxes must be looked at as a last resort – not the first.

The It's TIME! initiative has enabled the people of Arizona to draw the line. It will require a two thirds supermajority in the state legislature for tax increases, making it tougher to raise taxes. By voting yes, we will begin to take back control from a run-away tax and spend state legislature. It's time to take a stand. It's high noon in Arizona. Vote yes!

Tracy Thomas
Chairman
The Lincoln Caucus
Paradise Valley

Sydney Hoff
President
The Lincoln Caucus
Scottsdale

ARGUMENT "FOR" PROPOSITION 108

IT'S TIME! FOR 2/3 MAJORITIES

Requiring 2/3 majorities before the State Legislature can raise taxes or assess a fee is not a cure all. But it sure is a good start.

Our state has had eight tax increases in the last nine years. We have been rated seventh in the nation in taxes, higher than Massachusetts. When Arizona, the home of Barry Goldwater has higher taxes than Massachusetts, the land of Ted Kennedy, something is wrong.

Some of the good legislators at the State Capitol tried to pass the 2/3 majorities. They were blocked in committee. Over 250,000 fellow Arizonans signed the petition. The citizens of our state are saying enough is enough.

Our state is competing with others for jobs. Seven other states already have similar laws. When large companies plan they look ten to fifteen years down the road. This measure will show them that Arizona is a good place to invest since we've put an end to excessive tax increases.

This measure doesn't handcuff government. If there is a crisis or emergency, a great need for the poor or education, then a super-majority can be found. What this measure would do is change the emphasis in government. Rather than looking at where can we raise taxes, the legislature will now have to look at where we can cut spending.

The initiative drive was called "IT'S TIME!" as in "It's Time to limit taxes." A quarter of a million of our states residents felt it was a good idea. Now, it's time to bring fiscal responsibility back to our State government. Vote in favor on 2/3 majorities.

Doug Wead
Former Chairman
IT'S TIME!
Scottsdale

ARGUMENT "FOR" PROPOSITION 108

Dear Arizona Taxpayers:

I have been working at the grass roots level for years trying to play defense against the onslaught of higher taxation.

It's Time to go on the offense.

Yes, the demands for public spending are great. The intentions of most who argue for increased spending in education, health, job training and law enforcement are noble and genuine. But their is nothing noble about targeting the senior citizen or the working family to pay for ever increasing inefficiency and bureaucracy.

Government has a vital role to play in private life. It takes money for government to meet this role. But it takes human beings and families and businesses to produce the revenue that government desperately needs to find. We can no longer kill the goose that lays the golden egg. Economic growth, incentive to work, and governmental restraint are the only ways to efficiently fund the essential departments of government.

The taxpayer, the retiree, and the small business are not the enemy. Never again should their income be ravaged as a result of a single vote majority in the Legislature. It's Time will require a two thirds supermajority for new taxes.

Government will never look in earnest at its own inefficiencies or its own spending priorities until the taxpayer cries "ENOUGH!" It's Time we begin the cry.

Tom McGovern
Former Chairman
ENOUGH! Repeal the Tax Increase
Phoenix

BALLOT FORMAT

PROPOSITION 108

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE INITIATIVE

OFFICIAL TITLE

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 22; RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION.

DESCRIPTIVE TITLE

AMENDING ARIZONA CONSTITUTION TO REQUIRE A TWO-THIRDS VOTE OF THE LEGISLATURE FOR PASSAGE, AND A THREE-FOURTHS VOTE TO OVERRIDE A GOVERNOR'S VETO, OF ANY LEGISLATION THAT WOULD PROVIDE A NET INCREASE IN STATE REVENUES THROUGH CERTAIN CHANGES IN TAXES, TAX RATES, TAX DEDUCTIONS, FEES OR ASSESSMENTS.

PROPOSITION 108

A "yes" vote shall have the effect of requiring a greater number of votes in the Legislature to pass legislation providing for a net increase in state revenues.

YES ➔

A "no" vote shall have the effect of continuing to permit the Legislature to increase state revenues by a simple majority vote.

NO ➔

No. _____, Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,
Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS,
Defendant.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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October 19, 2020

Plaintiff, the State of New Hampshire, respectfully moves this Court for leave to file the attached Bill of Complaint. The grounds for this Motion are set forth in an accompanying brief.

Respectfully submitted,

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October 19, 2020

No. _____, Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS,

Defendant.

BILL OF COMPLAINT

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BILL OF COMPLAINT

Plaintiff, the State of New Hampshire brings this action against Defendant the Commonwealth of Massachusetts, and for its causes of action asserts as follows:

NATURE OF THE ACTION

1. The Commonwealth of Massachusetts has launched a direct attack on a defining feature of the State of New Hampshire's sovereignty. For decades, New Hampshire has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax. Not only does New Hampshire sit as an island among the New England States, but this choice differentiates New Hampshire from nearly every other State in the union. Indeed, just one other State—Alaska—has such a tax structure.

2. New Hampshire's sovereign policy choice has had profound effects. It has resulted in, on average, higher per capita income, lower unemployment, and a competitive edge in attracting new businesses and residents. In other words, it has helped create a "New Hampshire Advantage" that is central to New Hampshire's identity. It is through this advantage that New Hampshire successfully distinguishes itself as a sovereign and competes in the market for people, businesses, and economic prosperity.

3. In the middle of a global pandemic, Massachusetts has taken deliberate aim at the New

Hampshire Advantage by purporting to impose *Massachusetts* income tax on New Hampshire residents for income earned while working within New Hampshire. Upending decades of consistent practice, Massachusetts now taxes income earned entirely outside its borders. Through its unprecedented action, Massachusetts has unilaterally imposed an income tax within New Hampshire that New Hampshire, in its sovereign discretion, has deliberately chosen not to impose.

4. New Hampshire brings this case to rectify Massachusetts' unconstitutional, extraterritorial conduct, which ignores deliberate and unique policy choices that are solely New Hampshire's to make.

5. On April 21, 2020, Massachusetts adopted a temporary emergency regulation declaring (for the first time) that nonresident income received for services performed *outside Massachusetts* would be subject to the State's income tax. This emergency regulation applied retroactively to March 10, 2020. Massachusetts extended this regulation on a temporary basis in July and, most recently, adopted it as a final rule, effective October 16, 2020 (the "Tax Rule").

6. This extraterritorial assertion of taxing power is unconstitutional. Massachusetts claims the authority to tax New Hampshire residents who earn their incomes from activities they undertake solely within New Hampshire. For example, the *entire* salary of a New Hampshire resident who commuted to work

full time in Boston in February but has not set foot in the Commonwealth for more than eight months continues to be subject to the Massachusetts state income tax as if he were still working every day in Boston.

7. This Court has long recognized that States have limited power to tax nonresidents. Both the Commerce Clause and the Due Process Clause prohibit the States from "tax[ing] value earned outside [their] borders." *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 777 (1992). A State's reach beyond its borders to take money from nonresidents "under the pretext of taxation when there is no jurisdiction or power to tax is simple confiscation." *Miller Bros. Co. v. State of Md.*, 347 U.S. 340, 342 (1954). By taxing income earned entirely outside of its borders, Massachusetts subjects Granite Staters to simple but unconstitutional confiscation.

8. This Court's exercise of its original jurisdiction is urgently needed. New Hampshire has fundamental sovereign interests at stake. Indeed, Massachusetts' extraterritorial Tax Rule imposes an income tax on citizens of a state who are not, and historically have not been, subject to one, and who have selected New Hampshire (at least in part) for that reason. New Hampshire has long relied on its sovereign policy choices to create the New Hampshire Advantage, which, in turn, attracts both businesses and workers to the State.

9. The Tax Rule is a direct attack on this New Hampshire Advantage. It disrespects New

Hampshire's sovereignty. It undermines an incentive for businesses to locate capital and jobs in New Hampshire, a motivation for families to relocate to New Hampshire's communities, and the State's ability to pay for public services by reducing economic growth. It weakens efforts to recruit individuals to work for the state government. It endangers public health in New Hampshire by penalizing workers for following public health guidance and working from home rather than from their offices. And it undermines New Hampshire's sovereign duty to protect the economic and commercial interests of its citizens.

10. While the Tax Rule has a set expiration date, there is significant reason to believe the underlying shift in policy will survive the current pandemic. To date, Massachusetts has twice extended the Tax Rule, first as a temporary measure and now as a final rule. Further, the pandemic has drastically altered how work is conducted, with countless Americans now performing job functions at home that they had previously performed only at their places of employment. This Court's ongoing decision to conduct oral arguments by telephone illustrates this point. And some companies are already announcing that remote work will remain a permanent option following the pandemic. *See, e.g.*, *Microsoft makes remote work option permanent*, BBC (Oct. 9, 2020), https://bbc.in/2H1fPpX. Thus, it is likely that Massachusetts will continue to impose the Tax Rule or some similar policy long after the pandemic abates.

11. New Hampshire has no choice but to bring this action in this Court. Under federal law, this Court has "exclusive jurisdiction" over "all controversies between two or more States." 28 U.S.C. §1251(a). This Court therefore is the *only* forum that can hear New Hampshire's claims. The Court should exercise its jurisdiction to hear this dispute and grant New Hampshire declaratory and injunctive relief against Massachusetts' unconstitutional attempt to tax New Hampshire residents.

JURISDICTION

12. This Court has original and exclusive jurisdiction because the dispute is both a "Case[] . . . in which a State shall be Party" and a "controvers[y] between two or more States." U.S. Const., art. III, §2, cl. 2; 28 U.S.C. §1251(a).

PARTIES

13. Plaintiff is the State of New Hampshire. The State of New Hampshire is a sovereign State, whose citizens enjoy all the rights, privileges, and immunities guaranteed by the U.S. Constitution and federal law.

14. Defendant is the Commonwealth of Massachusetts, which is also a sovereign State.

FACTUAL ALLEGATIONS

A. The Limited Power of States to Tax Nonresidents

15. The power to tax may be "essential to the very existence of government, but the legitimacy of that power requires drawing a line between taxation and mere unjustified confiscation." *N. Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Tr.*, 139 S. Ct. 2213, 2219-20 (2019) (citations omitted).

16. States impose taxes on their residents "to provide for the preservation of peace, good order, and health, and the execution of such measures as conduce to the general good of [their] citizens." *United States v. City of New Orleans*, 98 U.S. 381, 393 (1878). This reflects a bargain between a State and its citizens: the citizens agree to pay a percentage of their worth in exchange for the State's commitment to provide protection and services.

17. A State's power to tax its residents is far-reaching. A State like Massachusetts "may, and does, exert its taxing power over [residents'] income from all sources, whether within or without the State." *Shaffer v. Carter*, 252 U.S. 37, 57 (1920) *abrogated on other grounds by Comptroller of Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015).

18. But a State's power to tax nonresidents is far more circumscribed. Under both the Commerce Clause and the Due Process Clause, a State has no authority to "tax value earned outside its borders."

Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768, 777 (1992).

19. A State's power to tax an individual's activities is justified only by the "'protection, opportunities and benefits' the State confers on those activities." *Id.* (quoting *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940)).

20. Thus, to pass constitutional muster, a state tax on nonresidents must be, among other things, "fairly apportioned" and "fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977); *see also Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 273 (1978) (requiring "income attributed to the State for tax purposes [to] be rationally related to values connected with the taxing State").

21. The tax policies of the various States reflect these constitutional constraints. Nearly every State that imposes a broad-based personal income tax on earned income requires nonresidents to pay tax only on income they earned "within the State." Jerome R. Hellerstein & Walter Hellerstein, *State Taxation*, ¶20.05[4](a) (3d ed. 2020).

22. States have various methods of determining when income is earned "within the State," but nearly all methods prevent taxation of nonresident income earned beyond their borders. *Id.* States' rules for determining the portion of a nonresident employee's compensation that is attributable to the State "generally reflect the relative amount of time that the nonresident employee spends

working in the state, or the amounts attributable to the specific services provided within the state." *Id.*; *see, e.g.,* W. Va. Code St. R. §110-21-32.2.1.2.e (taxing nonresidents based on "the ratio of days worked within West Virginia to the total days worked over the period during which the compensation was earned").

23. Income earned by a nonresident who works *outside* of the State is not subject to taxation by any State other than the residence State. *See* Hellerstein, *supra*, at ¶ 20.05[4].

B. Massachusetts' Prior Tax Policies

24. Massachusetts long respected these constitutional restraints. Under Massachusetts law, nonresidents with an annual "Massachusetts gross income" of more than $8,000 are required to pay state taxes on their income. *See* M.G.L. c. 62C, §6.

25. The "Massachusetts gross income" is determined "solely with respect to items of gross income from sources within the commonwealth of such person." M.G.L. c. 62 §5A(a).

26. Massachusetts currently taxes earned income at 5%. *See Income Tax Rate Drops to 5% on January 1, 2020*, Mass. Dep't of Rev. (Dec. 23, 2019), https://bit.ly/3cRwQ11.

27. Until recently, Massachusetts regulations made clear that nonresidents owed taxes only for the work they performed while physically within Massachusetts. Under the prior regime, "[w]hen a non-resident employee is able to establish

the exact amount of pay received for services performed in Massachusetts, that amount is the amount of Massachusetts source income." 830 CMR 62.5A.1(5)(a) (2008). When a precise determination was not possible, Massachusetts regulations required allocation of income between taxable Massachusetts sources and non-taxable out-of-state sources by using a fraction, "the numerator of which is the number of days spent working in Massachusetts and the denominator of which is the total working days." *Id.*

28. "Compensation rendered by a non-resident wholly outside Massachusetts, even though payment may be made from an office or place of business in Massachusetts of the employer, [was] not subject to the individual income tax." Mass. Dep't of Revenue, Letter Ruling 84-57, *Withholding for Non-Resident Employees* (Aug 2., 1984), https://bit.ly/3j6bnDe.

29. This allocation rule respected New Hampshire's rights, as a coequal sovereign in our federal system, to enact its *own* tax policies upon which its residents may rely. It also protected New Hampshire residents from paying unconstitutional taxes on income earned outside of Massachusetts. In those ways, the policy harmonized Massachusetts' sovereign interests with the interests of nonresidents and its neighboring States.

C. Massachusetts' Taxation of New Hampshire Residents Working in New Hampshire

30. That harmony recently came to an abrupt end. In March 2020, Massachusetts, like many States, declared a state of emergency in response to the COVID-19 pandemic. *See Governor's Declaration of Emergency*, Massachusetts Office of the Governor (Mar. 10, 2020), https://bit.ly/2GuugSM.

31. Pursuant to that declaration, Governor Baker ordered all businesses that did not provide "COVID-19 Essential Services" to cease in-person operations by March 24, 2020. *See Governor Charlie Baker Orders All Non-Essential Business to Cease in Person Operation, Directs the Department of Public Health to Issue Stay at Home Advisory for Two Weeks*, Massachusetts Office of the Governor (Mar. 23, 2020), https://bit.ly/30gWuY4.

32. Massachusetts businesses and their employees followed that order, and many employees transitioned to working from home indefinitely. In particular, tens of thousands of Granite Staters who formerly commuted to Massachusetts began working entirely from home in New Hampshire.

33. Instead of relying on Massachusetts' services during the workweek—police and fire protection, ambulance services, roads, and more—these individuals now consumed those same services within New Hampshire. Thus, if an emergency arose, these workers called New Hampshire's police and ambulance services, not Massachusetts'.

34. Because New Hampshire has made a fundamental policy decision, in its sole sovereign discretion, not to impose an income tax, it pays for these services through various other revenue sources.

35. As of 2017, more than 103,000 New Hampshire residents worked for Massachusetts-based companies, accounting for more than 15 percent of New Hampshire workers. U.S. Bureau of the Census, *Longitudinal Employer Household Dynamics*, https://bit.ly/2HiSLCv.

36. Those workers generated billions of dollars of income and paid hundreds of millions of dollars in Massachusetts state taxes.

37. Under Massachusetts' longstanding allocation policy, Massachusetts taxed the portion of income that New Hampshire residents earned while physically working *in Massachusetts*. New Hampshire residents working for Massachusetts enterprises were not taxed on income earned while physically working *in New Hampshire*.

38. On April 21, 2020, Massachusetts published an emergency regulation taxing—for the first time—income *earned in New Hampshire*.

39. Having already required or encouraged most employees to work from home, the Commonwealth declared: "[F]or the duration of the Massachusetts COVID-19 state of emergency, all compensation received for personal services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency, was

an employee engaged in performing such services in Massachusetts, and who, during such emergency, is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding." Mass. Dep't of Revenue, Technical Information Release 20-5, *Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic* (Apr. 21, 2020), https://bit.ly/3n2BrCp. Massachusetts imposed the emergency regulation retroactive to March 10, 2020. *Id.* By its terms, the regulation would expire on the date on which the Governor gave notice that the state of emergency was no longer in effect. *Id.*

40. Under Massachusetts law, emergency regulations are valid for only three months. *See* M.G.L. c. 30A, §2. Accordingly, on July 21, 2020, Massachusetts adopted a second emergency regulation imposing similar requirements. *See* Mass. Dep't of Revenue, Technical Information Release 20-10, *Revised Guidance on the Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic* (July 21, 2020), https://bit.ly/3l6Q05Q.

41. That same day, Massachusetts also proposed a formal administrative rule ("Proposed Rule"), which would impose the same requirements over a longer period (until the earlier of December 31, 2020 or 90 days after the Governor ended the state of the emergency). *See* 830 C.M.R. 62.5A3:

Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic, Mass. Dep't of Revenue (July 21, 2020), https://bit.ly/2SXirY4.

42. The Proposed Rule declared: "[A]ll compensation received for services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a Pandemic-Related Circumstance will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62, § 5A and personal income tax withholding pursuant to M.G.L. c. 62B, § 2." *Id.* at 830 CMR 62.5A.3(3).

43. The Proposed Rule defined "Pandemic-Related Circumstances" broadly to include, *inter alia*, "any . . . work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which [the rule] is in effect." *Id.* at 830 CMR 62.5A.3(2).

44. The Proposed Rule drew strong opposition during the comment period. More than 100 individuals, including nonresidents and legislators, testified at a hearing to review the Proposed Rule. Many criticized Massachusetts for "attempting to balance the budget on the backs of hard-working

Granite Staters." Greg Moore, *Testimony for Massachusetts Dep't of Revenue, Rulings & Regs. Bureau* (Aug. 27, 2020), https://bit.ly/3j9EqWg.

45. The New Hampshire Attorney General's office submitted comments opposing the Proposed Rule, pointing out that the Proposed Rule unconstitutionally imposed a tax on New Hampshire residents working entirely within New Hampshire and "infringe[d] upon the State of New Hampshire's fundamental interests as a sovereign." *See* N.H. Atty. Gen. Gordon MacDonald, *Comments on Proposed Regulation 830 CMR 62.5A.3*, 3 (Aug. 21, 2020).

46. The New Hampshire Department of Business and Economic Affairs submitted similar comments criticizing the Proposed Rule. *See* New Hampshire Department of Business and Economic Affairs, *Re: Proposed Regulation Relative to Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic*, 2 (Aug. 21, 2020) (noting that the proposed rule "does not reflect the realities of how work is being accomplished" during these difficult times).

47. Despite these objections, on October 16, 2020, Massachusetts published and approved the final rule ("Tax Rule"), largely as proposed. *See* 830 C.M.R. 62.5A3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic, Mass. Dep't of Revenue, (Oct. 16, 2020), https://bit.ly/31fgB9r. The Tax Rule took effect immediately.

D. New Hampshire's Strong Interest in Challenging the Tax Rule.

48. New Hampshire has a strong interest in eliminating the Tax Rule, for multiple reasons.

49. *First*, the Tax Rule infringes on New Hampshire's sovereign right to control its own tax and economic policies and undermines the strategy New Hampshire has deliberately employed to provide current and prospective businesses and residents with the New Hampshire Advantage.

50. New Hampshire has never imposed an income tax on its residents.[1] *See* N.H. Dep't of Revenue, *Taxpayer Assistance—Overview of New Hampshire Taxes*, https://bit.ly/2ET6i2T.

51. This longstanding policy choice is a fundamental part of the New Hampshire Advantage central to New Hampshire's sovereign identity, which distinguishes New Hampshire regionally and nationally.

52. By unlawfully levying an income tax on a sizable percentage of New Hampshire residents—on income earned *in New Hampshire*—Massachusetts has overridden New Hampshire's sovereign discretion over its tax policy to unilaterally impose the precise tax on New Hampshire residents that New Hampshire

[1] New Hampshire does impose a tax on interest and dividend income, *see* N.H. Rev. Stat. Ann. ch. 77 (2016), but does not impose an income tax on residents or nonresidents' individual earned income.

itself has consistently rejected. The Tax Rule directly contradicts New Hampshire's tax policies and effectively negates the express financial incentive (tax savings) that fuels New Hampshire's successful competition for capital and labor resources.

53. A State's decision about whether and how it collects revenue is "an action undertaken in its sovereign capacity." *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992). In that sovereign capacity, New Hampshire has set its own revenue collection policies for the benefit of its citizens. Moreover, New Hampshire has a sovereign duty to protect the "economic and commercial interests" of its citizens. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 609 (1982). This, too, it accomplishes through its sovereign policy choices.

54. The New Hampshire Advantage is not merely an abstract concept. New Hampshire's sovereign policy choices have helped boost per capita income, decrease unemployment, and create a competitive advantage that motivates businesses and individuals to choose New Hampshire as their homes.

55. New Hampshire has the seventh-highest median household income of any State at $74,057 per household. U.S. Bureau of the Census, *Median Household Income by State*, https://bit.ly/34XJd8t. This median household income is significantly higher than Maine, Rhode Island, Vermont, and the national average, and is comparable to Connecticut and Massachusetts, which also rank in the top ten. *Id.*

56. Importantly, New Hampshire's competitive and successful tax policies have not adversely impacted its ability to provide important public services to its citizens. For example, New Hampshire's public education systems have been ranked the sixth highest quality in the nation by Education Week, *see* Education Week, *Quality Counts 2020, State Grades on Chance for Success: 2020 Map and Rankings*, (Jan. 21, 2020), https://bit.ly/3lNyiVm, and New Hampshire ranks in the top ten highest spending per pupil among all states, *see* U.S. Bureau of the Census, *2018 Public Elementary-Secondary Education Finance Data*, Table 11 (Apr. 14, 2020), https://bit.ly/2SZsifV.

57. Similarly, in both 2018 and 2019, New Hampshire had the second-lowest average unemployment rate in New England and, respectively, the second-lowest and third-lowest unemployment rates nationally. *See* U.S. Bureau of Labor Statistics, *Regional and State Unemployment – 2019 Annual Averages*, Table 1 (Mar. 4, 2020), https://bit.ly/3lJa1jy. In both years, New Hampshire's average employment rate was significantly lower than the national average. *See id.*

58. New Hampshire's sovereign policy choices, and the advantageous economic landscape they create, are essential to New Hampshire's economic vitality. Numerous top companies from diverse business sectors call New Hampshire home. *See* N.H. Division of Economic Development, N.H. Dep't of Business and Economic Affairs, *Top Companies*, https://bit.ly/34QTwes. New Hampshire's

tax policies are also central to its efforts to motivate businesses to relocate to or expand within the State. *See* N.H. Division of Economic Development, N.H. Dep't of Business and Economic Affairs, *Why New Hampshire*, https://bit.ly/3lFTRHy.

59. The tax policies at the core of the New Hampshire Advantage have likewise succeeded in encouraging individuals and families to move to the State. Tens of thousands of people move to New Hampshire each year. Lori Wright, Univ. of New Hampshire, New Hampshire Agricultural Experiment Station, *Migration is Biggest Driver of Population Change in New Hampshire* (Nov. 19, 2019), https://bit.ly/33KHK63. In 2018, more than 20,000 people moved to New Hampshire from Massachusetts alone. U.S. Bureau of the Census, *State to State Migration Flows*, Table 1 (July 20, 2020), https://bit.ly/3dwuzZL.

60. A significant number of those new residents continue to work for Massachusetts-based employers, and many explicitly cite New Hampshire's tax laws as a reason why they moved. *See* Kenneth Johnson, *Why People Move to and Stay in New Hampshire*, Univ. of New Hampshire, Carsey School of Public Policy (Summer 2020), https://bit.ly/33pF3GB.

61. Indeed, tax experts agree that New Hampshire's tax policies have been key to "attracting new businesses and . . . generating economic and employment growth." Jared Walczak, *2020 State Business Tax Climate Index* at 8, Tax Foundation (Oct.

21, 2019), https://bit.ly/3dkZszV; *see also* Joe Horvath, *Why New Hampshire Attracts More Wealth and Commerce Than Maine*, Maine Policy Institute (June 22, 2016), https://bit.ly/33R2oBr ("Maine and New Hampshire are similar states," yet "New Hampshire . . . is outperforming Maine" because of "better economic policy").

62. By reaching across its borders into the wallets of New Hampshire residents, Massachusetts takes direct aim at New Hampshire's policy choices as a sovereign, and the New Hampshire Advantage that has resulted from those choices. Through the Tax Rule, Massachusetts effectively imposes its income tax in a State in which no comparable tax exists.

63. Massachusetts' actions undermine New Hampshire's efforts to maintain attractive economic conditions that motivate new businesses and workers to relocate to the State and existing businesses to expand within the State.

64. The Tax Rule also exacerbates the burden on New Hampshire's public services. The COVID-19 pandemic has increased demand for New Hampshire's government services generally, and work-from-home policies mean that tens of thousands of individuals are now exclusively relying on *New Hampshire*'s public services—including police and medical services, taxpayer-supported broadband internet, utilities, roads, and more—rather than Massachusetts'. Yet the Tax Rule ensures that those individuals continue to support public services in *Massachusetts* that they no longer use.

65. Massachusetts' actions harm the fabric of New Hampshire's communities. In recent years, young people and their families have flocked to New Hampshire to take advantage of the State's favorable policies and high quality of life. This migration is "important to New Hampshire's demographic future." Johnson, *supra*. These new residents bring tremendous energy and a wealth of new ideas to the State and further the State's longstanding culture of innovation in the economic and education sectors. The Tax Rule's attack on New Hampshire's migration incentives puts all these gains at risk.

66. In short, Massachusetts has taken aim at a defining feature of New Hampshire's sovereign identity through unconstitutional means. For this reason alone, New Hampshire has an existential interest, as a sovereign, in eliminating the Tax Rule.

67. *Second*, and relatedly, the Tax Rule harms New Hampshire's ability to recruit individuals to work for its state government.

68. More than 17,000 people work for the State of New Hampshire. Every day, New Hampshire state employees ensure public safety through police, fire, and rescue services, maintain public transportation, operate state courts, run New Hampshire's university system, and much more.

69. Many of the employees who New Hampshire recruits have spouses or other family members who work for Massachusetts employers (and may seek to work from home at least part time if they move to New Hampshire). If these families will be

forced to pay Massachusetts income taxes regardless where their work is performed, many will choose to live in Massachusetts.

70. New Hampshire has an interest, as a sovereign, in continuing to recruit and retain these individuals and their families.

71. *Finally*, the Tax Rule endangers public health in New Hampshire.

72. In March 2020, through his executive order, Governor Baker sent millions of workers home. As a result, tens of thousands of New Hampshire residents who had been traveling to Massachusetts to work were required to perform their duties from New Hampshire. And even now, when governments have rolled back many pandemic-related restrictions, working from home remains best practice for thousands of New Hampshire residents. For these residents, this shift in location is not merely a matter of preference or convenience, but rather required or encouraged by the government or their employers to protect the public health.

73. If these residents had *chosen* to work at home prior to the pandemic, any income they earned while working in New Hampshire would not be taxed as Massachusetts income.

74. Under the Tax Rule, however, income earned for work performed entirely within New Hampshire is taxed as *Massachusetts* source income.

75. And while the Tax Rule purportedly applies solely to remote work resulting from "Pandemic-Related Circumstances," that term is defined so broadly that seemingly *any person* who transitions to working from home for *any reason* while the Tax Rule is in effect remains subject to Massachusetts income tax for work performed in New Hampshire. *See* Tax Rule, 830 CMR 62.5A.3(2) (defining "Pandemic-Related Circumstances" to include "any other work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which 830 CMR 62.5A.3 is in effect").

76. In other words, the Tax Rule both penalizes individuals who are working from home at the direct request of the Massachusetts Governor and, more generally, disincentivizes *all* individuals from pursuing alternative work arrangements at a time when health officials continue to stress the importance of social distancing and other restrictions on in-person interactions.

77. Massachusetts has suggested that the Tax Rule is merely designed to maintain the status quo until the pandemic abates. This suggestion is belied by the definition of "Pandemic-Related Circumstances" in the Tax Rule, which inevitably sweeps up workers who are remote for reasons entirely unrelated to the pandemic. Thus, while Massachusetts paints the Tax Rule as a stopgap

measure designed to bridge a finite period of uncertainty, it in fact reflects an aggressive attempt to impose Massachusetts income tax within the borders of a coequal sovereign. The pandemic in no way alters this fact.

78. Yet, the pandemic continues to take its toll on Granite Staters. More than 9,000 New Hampshire residents have contracted the virus and more than 450 have died from it. *See* N.H. Dep't of Health & Human Servs., *COVID-19*, https://bit.ly/36s2jG4.

79. New Hampshire has a direct interest in protecting its citizens from the continued spread of the virus by incentivizing residents to work from home. *Jacobson v. Massachusetts*, 197 U.S. 11, 30 (1905) (a core "function" of the State is to "guard the public health" of its citizens); *see also North Dakota v. Minnesota*, 263 U.S. 365, 373 (1923) ("This Court has entertained [claims] by one state to enjoin . . . another" when the latter state's actions are "dangerous to the health of the inhabitants of the former.").

80. The Tax Rule undermines that interest by penalizing New Hampshire residents for following public health requirements and recommendations and incentivizing New Hampshire residents to travel across state borders.

81. New Hampshire has a strong interest in challenging the Tax Rule for this reason as well.

82. These serious harms to New Hampshire demonstrate the need for this Court's original

jurisdiction. This action "precisely 'implicates serious and important concerns of federalism fully in accord with the purposes and reach of [this Court's] original jurisdiction.'" *Wyoming v. Oklahoma*, 502 U.S. at 451 (quoting *Maryland v. Louisiana*, 451 U.S. 725, 744 (1981)) (exercising original jurisdiction over challenge to Oklahoma law under the Commerce Clause).

83. Indeed, this Court has not hesitated to entertain original actions over challenges by States to another State's taxes. *See, e.g., Connecticut v. New Hampshire*, 1992 WL 12620398 (U.S. 1992) (exercising original jurisdiction over a suit brought by Massachusetts and other states to challenge a New Hampshire tax); *Maryland v. Louisiana*, 451 U.S. at 756 (exercising original jurisdiction over a State challenge to a Louisiana tax). This case is equally important.[2]

[2] Although the Tax Rule expires on December 31, 2020, that will not moot this case. The legitimacy of the 2020 tax would still be at issue. Moreover, Massachusetts has already extended the rule twice over the vocal opposition of New Hampshire officials and residents, and it will surely do so again. *See Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (case not moot when issue is "capable of repetition, yet evading review"). Further, the mere existence of this aggressive incursion into New Hampshire's sovereign jurisdiction, if allowed to stand, will cast a shadow over the New Hampshire Advantage in the future.

CAUSES OF ACTION

COUNT I:
THE COMMERCE CLAUSE

84. Plaintiff incorporates all its prior allegations.

85. The Commerce Clause gives Congress the power to "regulate Commerce . . . among the several States." U.S. Const., Art. I, § 8, cl. 3.

86. But the clause also has been read as "contain[ing] a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995).

87. This construction serves the Commerce Clause's purpose of "preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear." *Id*. at 179-80.

88. A State's taxation of nonresidents will survive scrutiny under the Commerce Clause only if it meets four requirements. The State's tax must be (1) "applied to an activity with a substantial nexus with the taxing State"; (2) "fairly apportioned"; (3) non-discriminatory—*i.e.*, it must not "discriminate against interstate commerce"; and (4) "fairly related to the

services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

89. If any of these prongs is not satisfied, the state tax will be found unlawful under the Commerce Clause. *See, e.g., Connecticut v. New Hampshire*, 1992 WL 12620398, at *21-38 (Special Master finding that New Hampshire tax violated the Commerce Clause).

90. The Tax Rule fails all four prongs.

91. It fails the first prong because when a New Hampshire resident is performing work entirely within New Hampshire, Massachusetts lacks the requisite minimum connection with either the worker or her activity. *Allied-Signal, Inc.*, 504 U.S. at 777–78. "Substantial nexus" requires that "there must be a connection to the *activity itself*, rather than a connection only to the actor the State seeks to tax." *Id.* at 778 (emphasis added). The Tax Rule, in contrast, imposes a tax based solely on the location of the employer regardless of the work being done and where. Indeed, that is its very point: to recapture income on activity that *used to be* performed in Massachusetts. Because the Tax Rule purports to tax nonresidents on income earned from activity lacking any connection with Massachusetts, no "substantial nexus" exists.

92. The Tax Rule also fails the second prong of *Complete Auto*'s test, which requires that a tax must be "fairly apportioned." This "ensure[s] that each State taxes only its fair share of an interstate transaction." *Goldberg v. Sweet*, 488 U.S. 252, 260-61 (1989), *abrogated on other grounds by Wynne*, 135 S. Ct. at

1798. This prong is not satisfied "whenever one State's act of overreaching combines with the possibility that another State will claim its fair share of the value taxed: the portion of value by which one State exceeded its fair share would be taxed again by a State properly laying claim to it." *Oklahoma Tax Comm'n*, 514 U.S. at 184. The test, in other words, rejects the possibility of double taxation.

93. Through the Tax Rule, Massachusetts imposes a tax on activity that is occurring *in New Hampshire*. New Hampshire has the authority and prerogative to tax that income. That New Hampshire has decided not to exercise this authority over its own citizens is not a license for Massachusetts to do so; the mere possibility of double taxation is forbidden under the Commerce Clause. *See, e.g., Evco v. Jones*, 409 U.S. 91, 94 (1972) (state tax on the proceeds of out-of-state sales violated the Commerce Clause where it created a "risk of a double tax burden").

94. Simply put, "there is no practical or theoretical justification" allowing Massachusetts to "export tax burdens and import tax revenues." *Trinova Corp. v. Michigan Dep't of Treasury*, 498 U.S. 358, 374 (1991). Indeed, "[t]he Commerce Clause prohibits this competitive mischief." *Id.*

95. For similar reasons, the Tax Rule fails *Complete Auto*'s third prong, which prohibits discrimination against interstate commerce. In *Wynne*, this Court struck down a comparable Maryland tax scheme that "had the potential to result in discriminatory double taxation of income earned

out of state and created a powerful incentive to engage in intrastate rather than interstate economic activity." 135 S. Ct. at 1795. The Court supported its conclusion with reference to similar invalidations in *J. D. Adams Mfg. Co. v. Storen*, 304 U. S. 307 (1938), *Gwin, White & Prince, Inc. v. Henneford*, 305 U. S. 434 (1939), *Central Greyhound Lines, Inc. v. Mealey*, 334 U. S. 653 (1948), noting that "[i]n all three of these cases, the Court struck down a state tax scheme that might have resulted in the double taxation of income earned out of the State and that discriminated in favor of intrastate over interstate economic activity." *Wynne*, 135 S. Ct. at 1795.

96. In *Wynne*, this Court applied the Commerce Clause's "internal consistency" test to strike down the burdensome tax scheme. The Court stated that "[t]his test, which helps courts identify tax schemes that discriminate against interstate commerce, 'looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate.'" *Id.* at 1802 (quoting *Oklahoma Tax Comm'n*, 514 U.S. at 179).

97. The complex Massachusetts tax scheme under the Tax Rule fails the internal consistency test. If every state imposed a regime like the Tax Rule, a taxpayer who confined her activity to one State would pay a single tax on her income to the State where she was a resident and in which she earned the income. By contrast, the taxpayer who ventured across state lines to earn her income would pay a double tax on

such income, one to her State of residence and another to the State in which she earned the income. As a result, "interstate commerce would be taxed at a higher rate than intrastate commerce." *Id.* at 1791. And if every State passed a rule similar to the Tax Rule, the free movement of workers, goods, and services across state borders would suffer, as individuals would be less inclined to move between States or accept flexible working assignments. The Commerce Clause prevents precisely this type of "economic Balkanization." *Id.* at 1794.

98. Finally, the Tax Rule fails *Complete Auto*'s fourth prong, which requires the state tax to be "fairly related to the services provided by the State." 430 U.S. at 279.

99. This prong mandates that "the measure of the tax be reasonably related to the extent of the contact, since it is the activities or presence of the taxpayer in the State that may properly be made to bear a just share of state tax burden." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981) (citation omitted).

100. Under the Tax Rule, New Hampshire residents are taxed as though they are travelling to and working in Massachusetts—even if they never set foot in the State.

101. The Tax Rule thus is not in "proper proportion" to New Hampshire residents' "activities within [Massachusetts] and, therefore, to their consequent enjoyment of the opportunities and

protections which the State has afforded in connection with those activities." *Id.* (citation omitted).

102. Because Massachusetts' tax is not "assessed in proportion to a taxpayer's activities or presence in a State," the Tax Rule unconstitutionally requires New Hampshire residents to "shoulder[] [more than their] fair share." *Id.* at 627.

103. The Tax Rule accordingly violates the Commerce Clause.

COUNT II:
THE DUE PROCESS CLAUSE

104. Plaintiff incorporates all its prior allegations.

105. Due process "centrally concerns the fundamental fairness of governmental activity." *N.C. Dep't of Rev.*, 139 S. Ct. at 2219.

106. The Court has long recognized that the Due Process Clause prohibits a State from "tax[ing] value earned outside its borders." *Allied-Signal Inc.*, 504 U.S. at 778 (1992). That is because the "seizure of property by the State under pretext of taxation when there is no jurisdiction or power to tax is simple confiscation and a denial of due process of law." *Miller Bros. Co.*, 347 U.S. at 342.

107. To survive a challenge under the Due Process Clause, there must be "'some definite link, some minimum connection, between a [S]tate and the person, property or transaction it seeks to tax.'" *Allied-*

Signal Inc., 504 U.S. at 777 (quoting *Miller Brothers Co.*, 347 U.S. at 344-45).

108. In the case of a tax on an activity, "there must be a connection to the *activity itself*, rather than a connection only to the *actor*, the State seeks to tax." *Id.* at 778 (emphasis added).

109. In addition, the "income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." *Moorman Mfg. Co.*, 437 U.S. at 273 (citation omitted). If the connection is too attenuated, the state tax will violate the Due Process Clause. *See id.*

110. The Tax Rule violates these fundamental requirements of due process. It requires no connection between Massachusetts and the nonresidents on whom it imposes Massachusetts income tax other than the address of the nonresident's employer. Put differently, the Tax Rule bears no "fiscal relation to [the] protection, opportunities and benefits given by the state." *Wisconsin*, 311 U.S. at 444.

111. New Hampshire residents earning a living from home offices in New Hampshire are not protected by Massachusetts police, fire, and rescue services, do not seek education or housing opportunities provided by Massachusetts, and do not enjoy the benefits of Massachusetts roads, public transportation, or utilities. They do not "earn" income "in Massachusetts" any more than an outsourced customer service operator in a foreign country "earns" income "in the United States" by working for a U.S.-based employer.

112. The Tax Rule accordingly violates the Due Process Clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, New Hampshire requests that the Court order the following relief:

a) Declare that the Tax Rule violates the Commerce Clause and the Due Process Clause;

b) Preliminarily and permanently enjoin Massachusetts from enforcing the Tax Rule;

c) Enter an injunction requiring Massachusetts to refund all funds, including interest, collected from nonresidents pursuant to the Tax Rule;

d) Award costs and reasonable attorney's fees; and

e) Grant any other relief available at law or equity.

Respectfully submitted,

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October 19, 2020

No. _____, Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,
Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS,
Defendant.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTRODUCTION

The Commonwealth of Massachusetts has launched a direct attack on a defining feature of the State of New Hampshire's sovereignty. For decades, New Hampshire has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax. Not only does New Hampshire sit as an island among the New England States, but this choice differentiates New Hampshire from nearly every other State in the union. Indeed, just one other State—Alaska—has such a tax structure.

New Hampshire's sovereign policy choice has had profound effects. It has resulted in, on average, higher per capita income, lower unemployment, and a competitive edge in attracting new businesses and residents. In other words, it has helped create a "New Hampshire Advantage" that is central to New Hampshire's identity. It is through this advantage that New Hampshire successfully distinguishes itself as a sovereign and competes in the market for people, businesses, and economic prosperity.

In the middle of a global pandemic, Massachusetts has taken deliberate aim at the New Hampshire Advantage by purporting to impose *Massachusetts* income tax on New Hampshire residents for income earned while working within New Hampshire. Upending decades of consistent practice, Massachusetts now taxes income earned entirely outside its borders. Through its unprecedented action, Massachusetts has unilaterally imposed an income tax within New Hampshire that

New Hampshire, in its sovereign discretion, has deliberately chosen not to impose.

New Hampshire brings this case to rectify Massachusetts' unconstitutional, extraterritorial conduct, which ignores deliberate and unique policy choices that are solely New Hampshire's to make.

On April 21, 2020, Massachusetts adopted a temporary emergency regulation declaring (for the first time) that nonresident income received for services performed *outside Massachusetts* would be subject to the State's income tax. This emergency regulation applied retroactively to March 10, 2020. Massachusetts extended this regulation on a temporary basis in July and, most recently, adopted it as a final rule, effective October 16, 2020 (the "Tax Rule").

This extraterritorial assertion of taxing power is unconstitutional. Massachusetts claims the authority to tax New Hampshire residents who earn their incomes from activities they undertake solely within New Hampshire. For example, the *entire* salary of a New Hampshire resident who commuted to work full time in Boston in February but has not set foot in the Commonwealth for more than eight months continues to be subject to the Massachusetts state income tax as if he were still working every day in Boston.

This Court has long recognized that States have limited power to tax nonresidents. Both the Commerce Clause and the Due Process Clause prohibit the States from "tax[ing] value earned outside [their] borders."

Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768, 777 (1992). A State's reach beyond its borders to take money from nonresidents "under the pretext of taxation when there is no jurisdiction or power to tax is simple confiscation." *Miller Bros. Co. v. State of Md.*, 347 U.S. 340, 342 (1954). By taxing income earned entirely outside of its borders, Massachusetts subjects Granite Staters to simple but unconstitutional confiscation.

This Court's exercise of its original jurisdiction is urgently needed. New Hampshire has fundamental sovereign interests at stake. Indeed, Massachusetts' extraterritorial Tax Rule imposes an income tax on citizens of a state who are not, and historically have not been, subject to one, and who have selected New Hampshire (at least in part) for that reason. New Hampshire has long relied on its sovereign policy choices to create the New Hampshire Advantage, which, in turn, attracts both businesses and workers to the State. The Tax Rule is a direct attack on this New Hampshire Advantage. It disrespects New Hampshire's sovereignty. It undermines an incentive for businesses to locate capital and jobs in New Hampshire, a motivation for families to relocate to New Hampshire's communities, and the State's ability to pay for public services. It weakens efforts to recruit individuals to work for the state government. It endangers public health in New Hampshire by penalizing workers for following public health guidance and working from home rather than from their offices. And it undermines New Hampshire's sovereign duty to protect the economic and commercial interests of its citizens.

While the Tax Rule has a set expiration date, there is significant reason to believe the underlying shift in policy will survive the current pandemic. To date, Massachusetts has twice extended the Tax Rule, first as a temporary measure and now as a final rule. Further, the pandemic has drastically altered how work is conducted, with countless Americans now performing job functions at home that they had previously performed only at their places of employment. This Court's ongoing decision to conduct oral arguments by telephone illustrates this point. And some companies are already announcing that remote work will remain a permanent option following the pandemic. *See, e.g.*, *Microsoft makes remote work option permanent*, BBC (Oct. 9, 2020), https://bbc.in/2H1fPpX. Thus, it is likely that Massachusetts will continue to impose the Tax Rule or some similar policy long after the pandemic abates.

New Hampshire has no choice but to bring this action in this Court. Under federal law, this Court has "exclusive jurisdiction" over "all controversies between two or more States." 28 U.S.C. §1251(a). This Court therefore is the *only* forum that can hear New Hampshire's claims. The Court should exercise its jurisdiction to hear this dispute and grant New Hampshire declaratory and injunctive relief against Massachusetts' unconstitutional attempt to tax New Hampshire residents.

Alternatively, the Court should consider reexamining its modern understanding that its original jurisdiction is discretionary. Article III establishes this Court's original jurisdiction in

mandatory terms: "In all cases . . . in which a State shall be [a] Party, the supreme Court *shall* have original Jurisdiction." Moreover, because Congress has given this Court "exclusive" jurisdiction over disputes between States, refusing to hear such disputes is not only textually suspect, but also inequitable. The Court should grant the motion for leave to file the bill of complaint.

STATEMENT OF THE CASE

A. The Limited Power of States to Tax Nonresidents

The power to tax may be "essential to the very existence of government, but the legitimacy of that power requires drawing a line between taxation and mere unjustified confiscation." *N. Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Tr.*, 139 S. Ct. 2213, 2219-20 (2019) (citations omitted). States impose taxes on their residents "to provide for the preservation of peace, good order, and health, and the execution of such measures as conduce to the general good of [their] citizens." *United States v. City of New Orleans*, 98 U.S. 381, 393 (1878). This reflects a bargain between a State and its citizens: the citizens agree to pay a percentage of their worth in exchange for the State's commitment to provide protection and services.

A State's power to tax its residents is far-reaching. A State like Massachusetts "may, and does, exert its taxing power over [residents'] income from all sources, whether within or without the State." *Shaffer v. Carter*, 252 U.S. 37, 57 (1920), *abrogated on other*

grounds by Comptroller of Treasury of Maryland v. Wynne, 135 S. Ct. 1787 (2015). But a State's power to tax nonresidents is far more circumscribed. Under both the Commerce Clause and the Due Process Clause, a State has no authority to "tax value earned outside its borders." *Allied-Signal, Inc. v. Director, Div. of* Taxation, 504 U.S. 768, 777 (1992). A State's power to tax an individual's activities is justified only by the "'protection, opportunities and benefits' the State confers on those activities." *Id.* (quoting *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940)). Thus, to pass constitutional muster, a state tax on nonresidents must be, among other things, "fairly apportioned" and "fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977); *see also Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 273 (1978) (requiring "income attributed to the State for tax purposes [to] be rationally related to values connected with the taxing State").

The tax policies of the various States reflect these constitutional constraints. Nearly every State that imposes a broad-based personal income tax on earned income requires nonresidents to pay tax only on income they earned "within the State." Jerome R. Hellerstein & Walter Hellerstein, *State Taxation*, ¶20.05[4](a) (3d ed. 2020). States have various methods of determining when income is earned "within the State," but nearly all methods prevent taxation of nonresident income earned beyond their borders. *Id.* States' rules for determining the portion of a nonresident employee's compensation that is attributable to the State "generally reflect the relative

amount of time that the nonresident employee spends working in the state, or the amounts attributable to the specific services provided within the state." *Id.*; *see, e.g.,* W. Va. Code St. R. §110-21-32.2.1.2.e (taxing nonresidents based on "the ratio of days worked within West Virginia to the total days worked over the period during which the compensation was earned"). Income earned by a nonresident who works *outside* of the State is not subject to taxation by any State other than the residence State. *See* Hellerstein, *supra*, at ¶ 20.05[4].

B. Massachusetts' Prior Tax Policies

Massachusetts long respected these constitutional restraints. Under Massachusetts law, nonresidents with an annual "Massachusetts gross income" of more than $8,000 are required to pay state taxes on their income. *See* M.G.L. c. 62C, §6. The "Massachusetts gross income" is determined "solely with respect to items of gross income from sources within the commonwealth of such person." M.G.L. c. 62 §5A(a). Massachusetts currently taxes earned income at 5%. *See Income Tax Rate Drops to 5% on January 1, 2020*, Mass. Dep't of Rev. (Dec. 23, 2019), https://bit.ly/3cRwQ11.

Until recently, Massachusetts regulations made clear that nonresidents owed taxes only for the work they performed while physically within Massachusetts. Under the prior regime, "[w]hen a non-resident employee is able to establish the exact amount of pay received for services performed in Massachusetts, that amount is the amount of Massachusetts source income." 830 CMR 62.5A.1(5)(a)

(2008). When a precise determination was not possible, Massachusetts regulations required allocation of income between taxable Massachusetts sources and non-taxable out-of-state sources by using a fraction, "the numerator of which is the number of days spent working in Massachusetts and the denominator of which is the total working days." *Id.* "Compensation rendered by a non-resident wholly outside Massachusetts, even though payment may be made from an office or place of business in Massachusetts of the employer, [was] not subject to the individual income tax." Mass. Dep't of Revenue, Letter Ruling 84-57, *Withholding for Non-Resident Employees* (Aug 2., 1984), https://bit.ly/3j6bnDe.

This allocation rule respected New Hampshire's rights, as a coequal sovereign in our federal system, to enact its *own* tax policies upon which its residents may rely. It also protected New Hampshire residents from paying unconstitutional taxes on income earned outside of Massachusetts. In those ways, the policy harmonized Massachusetts' sovereign interests with the interests of nonresidents and its neighboring States.

C. Massachusetts' Taxation of New Hampshire Residents Working in New Hampshire

That harmony recently came to an abrupt end. In March 2020, Massachusetts, like many States, declared a state of emergency in response to the COVID-19 pandemic. *See Governor's Declaration of Emergency*, Massachusetts Office of the Governor (Mar. 10, 2020), https://bit.ly/2GuugSM. Pursuant to

that declaration, Governor Baker ordered all businesses that did not provide "COVID-19 Essential Services" to cease in-person operations by March 24, 2020. *See Governor Charlie Baker Orders All Non-Essential Business to Cease in Person Operation, Directs the Department of Public Health to Issue Stay at Home Advisory for Two Weeks*, Massachusetts Office of the Governor (Mar. 23, 2020), https://bit.ly/30gWuY4.

Massachusetts businesses and their employees followed that order, and many employees transitioned to working from home indefinitely. In particular, tens of thousands of Granite Staters who formerly commuted to Massachusetts began working from home in New Hampshire. Instead of relying on Massachusetts' services during the workweek—police and fire protection, ambulance services, roads, and more—these individuals now consumed those same services within New Hampshire. Thus, if an emergency arose, these workers called New Hampshire's police and ambulance services, not Massachusetts'. Because New Hampshire has made a fundamental policy decision, in its sole sovereign discretion, not to impose an income tax, it pays for these services through various other revenue sources.

As of 2017, more than 103,000 New Hampshire residents worked for Massachusetts-based companies, accounting for more than 15 percent of New Hampshire workers. U.S. Bureau of the Census, *Longitudinal Employer Household Dynamics*, https://bit.ly/2HiSLCv. Those workers generated billions of dollars of income and paid hundreds of

millions of dollars in Massachusetts state taxes. Under Massachusetts' longstanding allocation policy, Massachusetts taxed the portion of income that New Hampshire residents earned while physically working *in Massachusetts*. New Hampshire residents working for Massachusetts enterprises were not taxed on income earned while physically working *in New Hampshire*.

On April 21, 2020, Massachusetts published an emergency regulation taxing—for the first time—income *earned in New Hampshire*. Having already required or encouraged most employees to work from home, the Commonwealth declared:

> [F]or the duration of the Massachusetts COVID-19 state of emergency, all compensation received for personal services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who, during such emergency, is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding.

Mass. Dep't of Revenue, Technical Information Release 20-5, *Massachusetts Tax Implications of an*

Employee Working Remotely due to the COVID-19 Pandemic (Apr. 21, 2020), https://bit.ly/3n2BrCp. Massachusetts imposed the emergency regulation retroactive to March 10, 2020. *Id*. By its terms, the regulation would expire on the date on which the Governor gave notice that the state of emergency was no longer in effect. *Id.*

Under Massachusetts law, emergency regulations are valid for only three months. *See* M.G.L. c. 30A, §2. Accordingly, on July 21, 2020, Massachusetts adopted a second emergency regulation imposing similar requirements. *See* Mass. Dep't of Revenue, Technical Information Release 20-10, *Revised Guidance on the Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic* (July 21, 2020), https://bit.ly/3l6Q05Q.

That same day, Massachusetts proposed a formal administrative rule ("Proposed Rule"), which would impose the same requirements over a longer period (until the earlier of December 31, 2020 or 90 days after the Governor ended the state of the emergency). *See* 830 C.M.R. 62.5A3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic, Mass. Dep't of Revenue (July 21, 2020), https://bit.ly/2SxirY4. The Proposed Rule declared:

> [A]ll compensation received for services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency was an

> employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a Pandemic-Related Circumstance will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62, § 5A and personal income tax withholding pursuant to M.G.L. c. 62B, § 2.

Id. at 830 CMR 62.5A.3(3). The Proposed Rule defined "Pandemic-Related Circumstances" broadly to include, *inter alia*, "any . . . work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which [the rule] is in effect." *Id.* at 830 CMR 62.5A.3(2).

The Proposed Rule drew strong opposition during the comment period. More than 100 individuals, including nonresidents and legislators, testified at a hearing to review the Proposed Rule. Many criticized Massachusetts for "attempting to balance the budget on the backs of hard-working Granite Staters." Greg Moore, *Testimony for Massachusetts Dep't of Revenue, Rulings & Regs. Bureau* (Aug. 27, 2020), https://bit.ly/3j9EqWg.

The New Hampshire Attorney General's office submitted comments opposing the Proposed Rule, pointing out that the Proposed Rule

unconstitutionally imposed a tax on New Hampshire residents working entirely within New Hampshire and "infringe[d] upon the State of New Hampshire's fundamental interests as a sovereign." *See* N.H. Atty. Gen. Gordon MacDonald, *Comments on Proposed Regulation 830 CMR 62.5A.3*, 3 (Aug. 21, 2020). The New Hampshire Department of Business and Economic Affairs submitted similar comments criticizing the Proposed Rule. *See* New Hampshire Department of Business and Economic Affairs, *Re: Proposed Regulation Relative to Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic*, 2 (Aug. 21, 2020) (noting that the proposed rule "does not reflect the realities of how work is being accomplished" during these difficult times).

Despite these objections, on October 16, 2020, Massachusetts published and approved the final rule ("Tax Rule") largely as proposed. *See* 830 C.M.R. 62.5A3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic, Mass. Dep't of Revenue, (Oct. 16, 2020), https://bit.ly/31fgB9r. The Tax Rule took effect immediately.

ARGUMENT

Article III of the U.S. Constitution provides that "[i]n all Cases . . . in which a state shall be a Party, the supreme Court shall have original Jurisdiction." U.S. Const. art. III, § 2, cl. 2. In addition, under 28 U.S.C. §1251(a), "[t]he Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States." 28 U.S.C. §1251(a). A plaintiff

seeking to bring an original action in this Court must first file a motion for leave to file a bill of complaint. *See* S. Ct. R. 17.

The Court should grant New Hampshire's motion for leave to file a bill of complaint because New Hampshire's bill of complaint raises issues of serious importance and no alternative forum exists for resolving its claims. In the alternative, the Court should grant leave to file a bill of complaint because Article III requires the Court to exercise its original jurisdiction over disputes between two States.

I. The Bill of Complaint Presents Issues of Serious Importance that Warrant the Court's Original Jurisdiction.

This Court examines two factors when deciding whether to exercise its original jurisdiction. First, the Court looks to "the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim." *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (citations omitted). Second, the Court explores "the availability of an alternative forum in which the issue tendered can be resolved." *Id*. Both factors support exercising jurisdiction here.

A. New Hampshire's Strong Interest and the Seriousness and Dignity of Its Claims Warrant the Exercise of the Court's Original Jurisdiction.

1. New Hampshire has a strong interest in eliminating the Tax Rule, for multiple reasons. *First*, the Tax Rule infringes on New Hampshire's sovereign right to control its own tax and economic policies and

undermines the strategy New Hampshire has deliberately employed to provide current and prospective businesses and residents with the New Hampshire Advantage. New Hampshire has never imposed an income tax on its residents.[1] *See* N.H. Dep't of Revenue, *Taxpayer Assistance—Overview of New Hampshire Taxes*, https://bit.ly/2ET6i2T. This longstanding policy choice is a fundamental part of the New Hampshire Advantage central to its sovereign identity, which distinguishes New Hampshire regionally and nationally.

By unlawfully levying an income tax on a sizable percentage of New Hampshire residents—on income earned *in New Hampshire*—Massachusetts has overridden New Hampshire's sovereign discretion over its tax policy to unilaterally impose the precise tax on New Hampshire residents that New Hampshire itself has consistently rejected. The Tax Rule directly contradicts New Hampshire's tax policies and effectively negates the express financial incentive (tax savings) that fuels New Hampshire's successful competition for capital and labor resources. A State's decision about whether and how it collects revenue is "an action undertaken in its sovereign capacity." *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992). In that sovereign capacity, New Hampshire has set its own revenue collection policies for the benefit of its citizens. Moreover, New Hampshire has a sovereign

[1] New Hampshire does impose a tax on interest and dividend income, *see* N.H. Rev. Stat. Ann. ch, 77 (2016), but does not impose an income tax on residents or nonresidents' individual earned income.

duty to protect the "economic and commercial interests" of its citizens. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 609 (1982). This, too, it accomplishes through its sovereign policy choices.

The New Hampshire Advantage is not merely an abstract concept. New Hampshire's sovereign policy choices have helped boost per capita income, decrease unemployment, and create a competitive advantage that motivates businesses and individuals to choose New Hampshire as their homes. New Hampshire has the seventh-highest median household income of any State at $74,057 per household. U.S. Bureau of the Census, *Median Household Income by State*, https://bit.ly/34XJd8t. This median household income is significantly higher than Maine, Rhode Island, Vermont, and the national average, and is comparable to Connecticut and Massachusetts, which also rank in the top ten. *Id.*

Importantly, New Hampshire's competitive and successful tax policies have not adversely impacted its ability to provide important public services to its citizens. For example, New Hampshire's public education systems have been ranked the sixth highest quality in the nation by Education Week, *see* Education Week, *Quality Counts 2020, State Grades on Chance for Success: 2020 Map and Rankings*, (Jan. 21, 2020), https://bit.ly/3lNyiVm, and New Hampshire ranks in the top ten highest spending per pupil among all states, *see* U.S. Bureau of the Census, *2018 Public Elementary-Secondary Education Finance Data*, Table 11 (Apr. 14, 2020), https://bit.ly/2SZsifV.

Similarly, in both 2018 and 2019, New Hampshire had the second-lowest average unemployment rate in New England and, respectively, the second-lowest and third-lowest unemployment rates nationally. *See* U.S. Bureau of Labor Statistics, *Regional and State Unemployment – 2019 Annual Averages*, Table 1 (Mar. 4, 2020), https://bit.ly/3lJa1jy. In both years, New Hampshire's average employment rate was significantly lower than the national average. *See id.*

New Hampshire's sovereign policy choices, and the advantageous economic landscape they create, are essential to New Hampshire's economic vitality. Numerous top companies from diverse business sectors call New Hampshire home. *See* N.H. Division of Economic Development, N.H. Dep't of Business and Economic Affairs, *Top Companies*, https://bit.ly/34QTwes. New Hampshire's tax policies are also central to its efforts to motivate businesses to relocate to or expand within the State. *See* N.H. Division of Economic Development, N.H. Dep't of Business and Economic Affairs, *Why New Hampshire*, https://bit.ly/3lFTRHy.

The tax policies at the core of the New Hampshire Advantage have likewise succeeded in encouraging individuals and families to move to the State. Tens of thousands of people move to New Hampshire each year. Lori Wright, Univ. of New Hampshire, New Hampshire Agricultural Experiment Station, *Migration is Biggest Driver of Population Change in New Hampshire* (Nov. 19, 2019), https://bit.ly/33KHK63. In 2018, more than 20,000

people moved to New Hampshire from Massachusetts alone. U.S. Bureau of the Census, *State to State Migration Flows*, Table 1 (July 20, 2020), https://bit.ly/3dwuzZL.

A significant number of those new residents continue to work for Massachusetts-based employers, and many explicitly cite New Hampshire's tax laws as a reason why they moved. *See* Kenneth Johnson, *Why People Move to and Stay in New Hampshire*, Univ. of New Hampshire, Carsey School of Public Policy (Summer 2020), https://bit.ly/33pF3GB. Indeed, tax experts agree that New Hampshire's tax policies have been key to "attracting new businesses and . . . generating economic and employment growth." Jared Walczak, *2020 State Business Tax Climate Index* at 8, Tax Foundation (Oct. 21, 2019), https://bit.ly/3dkZszV; *see also* Joe Horvath, *Why New Hampshire Attracts More Wealth and Commerce Than Maine*, Maine Policy Institute (June 22, 2016), https://bit.ly/33R2oBr ("Maine and New Hampshire are similar states," yet "New Hampshire . . . is outperforming Maine" because of "better economic policy").

By reaching across its borders into the wallets of New Hampshire residents, Massachusetts takes direct aim at New Hampshire's policy choices as a sovereign, and the New Hampshire Advantage that has resulted from those choices. Through the Tax Rule, Massachusetts effectively imposes its income tax in a State in which no comparable tax exists. Massachusetts' actions undermine New Hampshire's efforts to maintain attractive economic conditions that motivate new businesses and workers to relocate to

the State and existing businesses to expand within the State.

The Tax Rule also exacerbates the burden on New Hampshire's public services. The COVID-19 pandemic has increased demand for New Hampshire's government services generally, and work-from-home policies mean that tens of thousands of individuals are now exclusively relying on *New Hampshire*'s public services—including police and medical services, taxpayer-supported broadband internet, utilities, roads, and more—rather than Massachusetts'. Yet the Tax Rule ensures that those individuals continue to support public services in *Massachusetts* that they no longer use.

Massachusetts' actions harm the fabric of New Hampshire's communities. In recent years, young people and their families have flocked to New Hampshire to take advantage of the State's favorable policies and high quality of life. This migration is "important to New Hampshire's demographic future." Johnson, *supra*. These new residents bring tremendous energy and a wealth of new ideas to the State and further the State's longstanding culture of innovation in the economic and education sectors. The Tax Rule's attack on New Hampshire's migration incentives puts all these gains at risk.

In short, Massachusetts has taken aim at a defining feature of New Hampshire's sovereign identity through unconstitutional means. For this reason alone, New Hampshire has an existential interest, as a sovereign, in eliminating the Tax Rule.

Second, and relatedly, the Tax Rule harms New Hampshire's ability to recruit individuals to work for its state government. More than 17,000 people work for the State of New Hampshire. Every day, New Hampshire state employees ensure public safety through police, fire, and rescue services, maintain public transportation, operate state courts, run New Hampshire's university system, and much more. Many of the employees who New Hampshire recruits have spouses or other family members who work for Massachusetts employers (and may seek to work from home at least part time if they move to New Hampshire). If these families will be forced to pay Massachusetts income taxes regardless where their work is performed, many will choose to live in Massachusetts. New Hampshire has an interest, as a sovereign, in continuing to recruit and retain these individuals and their families.

Finally, the Tax Rule endangers public health in New Hampshire. In March 2020, through his executive order, Governor Baker sent millions of workers home. As a result, tens of thousands of New Hampshire residents who had been traveling to Massachusetts to work were required to perform their duties from New Hampshire. And even now, when governments have rolled back many pandemic-related restrictions, working from home remains best practice for thousands of New Hampshire residents. For these residents, this shift in location is not merely a matter of preference or convenience, but rather required or encouraged by the government or their employers to protect the public health.

If these residents had *chosen* to work at home prior to the pandemic, any income they earned while working in New Hampshire would not be taxed as Massachusetts income. Under the Tax Rule, however, income earned for work performed entirely within New Hampshire is taxed as *Massachusetts* source income. And while the Tax Rule purportedly applies solely to remote work resulting from "Pandemic-Related Circumstances," that term is defined so broadly that *any person* who transitions to working from home for *any reason* while the Tax Rule is in effect remains subject to Massachusetts income tax for work performed in New Hampshire. *See* Tax Rule, 830 CMR 62.5A.3(2) (defining "Pandemic-Related Circumstances" to include "any other work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which 830 CMR 62.5A.3 is in effect").

In other words, the Tax Rule both penalizes individuals who are working from home at the direct request of the Massachusetts Governor and, more generally, disincentivizes *all* individuals from pursuing alternative work arrangements at a time when health officials continue to stress the importance of social distancing and other restrictions on in-person interactions. Massachusetts has suggested that the Tax Rule is merely designed to maintain the status quo until the pandemic abates. This suggestion is belied by the definition of "Pandemic-Related Circumstances" in the Tax Rule, which inevitably

sweeps up workers who are remote for reasons entirely unrelated to the pandemic. Thus, while Massachusetts paints the Tax Rule as a stopgap measure designed to bridge a finite period of uncertainty, it in fact reflects an aggressive attempt to impose Massachusetts income tax within the borders of a coequal sovereign. The pandemic in no way alters this fact.

Yet, the pandemic continues to take its toll on Granite Staters. More than 9,000 New Hampshire residents have contracted the virus and more than 450 have died from it. *See* N.H. Dep't of Health & Human Servs., *COVID-19*, https://bit.ly/36s2jG4. New Hampshire has a direct interest in protecting its citizens from the continued spread of the virus by incentivizing residents to work from home. *Jacobson v. Massachusetts*, 197 U.S. 11, 30 (1905) (a core "function" of the State is to "guard the public health" of its citizens); *see also North Dakota v. Minnesota*, 263 U.S. 365, 373 (1923) ("This Court has entertained [claims] by one state to enjoin . . . another" when the latter state's actions are "dangerous to the health of the inhabitants of the former.").

The Tax Rule undermines that interest by penalizing New Hampshire residents for following public health requirements and recommendations and incentivizing New Hampshire residents to travel across state borders. New Hampshire has a strong interest in challenging the Tax Rule for this reason as well.

These serious harms to New Hampshire demonstrate the need for this Court's original jurisdiction. This action "precisely 'implicates serious and important concerns of federalism fully in accord with the purposes and reach of [this Court's] original jurisdiction.'" *Wyoming v. Oklahoma*, 502 U.S. at 451 (quoting *Maryland v. Louisiana*, 451 U.S. 725, 744 (1981)) (exercising original jurisdiction over challenge to Oklahoma law under the Commerce Clause). Indeed, this Court has not hesitated to entertain original actions over challenges by States to another State's taxes. *See, e.g., Connecticut v. New Hampshire*, 1992 WL 12620398 (U.S. 1992) (exercising original jurisdiction over a suit brought by Massachusetts and other states to challenge a New Hampshire tax); *Maryland v. Louisiana*, 451 U.S. at 756 (exercising original jurisdiction over a State challenge to a Louisiana tax). This case is equally important.[2]

2. New Hampshire's claims also are "serious" and directly tied to New Hampshire's fundamental interests as a sovereign. *Mississippi v. Louisiana*, 506 U.S. at 739. New Hampshire brings two claims—

[2] Although the Tax Rule expires on December 31, 2020, that will not moot this case. The legitimacy of the 2020 tax would still be at issue. Moreover, Massachusetts has already extended the rule twice over the vocal opposition of New Hampshire officials and residents, and it will surely do so again. *See Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (case not moot when issue is "capable of repetition, yet evading review"). Further, the mere existence of this aggressive incursion into New Hampshire's sovereign jurisdiction, if allowed to stand, will cast a shadow over the New Hampshire Advantage in the future.

under the Commerce Clause and the Due Process Clause—and it is likely to prevail on both challenges.

The Commerce Clause gives Congress the power to "regulate Commerce . . . among the several States." U.S. Const., Art. I, § 8, cl. 3. But the clause also has been read as "contain[ing] a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995). This construction serves the Commerce Clause's purpose of "preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear." *Id.* at 179-80.

A State's taxation of nonresidents will survive scrutiny under the Commerce Clause only if it meets four requirements. The State's tax must be (1) "applied to an activity with a substantial nexus with the taxing State"; (2) "fairly apportioned"; (3) non-discriminatory—*i.e.*, it must not "discriminate against interstate commerce"; and (4) "fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). If any of these prongs is not satisfied, the state tax will be found unlawful under the Commerce Clause. *See, e.g., Connecticut v. New Hampshire*, 1992 WL 12620398, at *21-38 (Special Master finding that New Hampshire tax violated the Commerce Clause).

The Tax Rule fails all four prongs. It fails the first prong because when a New Hampshire resident is performing work entirely within New Hampshire, Massachusetts lacks the requisite minimum connection with either the worker or her activity. *Allied-Signal, Inc.*, 504 U.S. at 777-78. "Substantial nexus" requires that "there must be a connection to the *activity itself*, rather than a connection only to the actor the State seeks to tax." *Id.* at 778 (emphasis added). The Tax Rule, in contrast, imposes a tax based solely on the location of the employer regardless of the work being done and where. Indeed, that is its very point: to recapture income on activity that *used to be* performed in Massachusetts. Because the Tax Rule purports to tax nonresidents on income earned from activity lacking any connection with Massachusetts, no "substantial nexus" exists.

The Tax Rule also fails the second prong of *Complete Auto*'s test, which requires that a tax must be "fairly apportioned." This "ensure[s] that each State taxes only its fair share of an interstate transaction." *Goldberg v. Sweet*, 488 U.S. 252, 260 (1989), *abrogated on other grounds by Wynne*, 135 S. Ct. at 1798. This prong is not satisfied "whenever one State's act of overreaching combines with the possibility that another State will claim its fair share of the value taxed: the portion of value by which one State exceeded its fair share would be taxed again by a State properly laying claim to it." *Oklahoma Tax Comm'n*, 514 U.S. at 184. The test, in other words, rejects the possibility of double taxation.

Through the Tax Rule, Massachusetts imposes a tax on activity that is occurring *in New Hampshire*. New Hampshire has the authority and prerogative to tax that income. That New Hampshire has decided not to exercise this authority over its own citizens is not a license for Massachusetts to do so; the mere possibility of double taxation is forbidden under the Commerce Clause. *See, e.g., Evco v. Jones*, 409 U.S. 91, 94 (1972) (state tax on the proceeds of out-of-state sales violated the Commerce Clause where it created a "risk of a double tax burden"). Simply put, "there is no practical or theoretical justification" allowing Massachusetts to "export tax burdens and import tax revenues." *Trinova Corp. v. Michigan Dep't of Treasury*, 498 U.S. 358, 374 (1991). Indeed, "[t]he Commerce Clause prohibits this competitive mischief." *Id.*

For similar reasons, the Tax Rule fails *Complete Auto*'s third prong, which prohibits discrimination against interstate commerce. In *Wynne*, this Court struck down a comparable Maryland tax scheme that "had the potential to result in discriminatory double taxation of income earned out of state and created a powerful incentive to engage in intrastate rather than interstate economic activity." 135 S. Ct. at 1795. The Court supported its conclusion with reference to similar invalidations in *J. D. Adams Mfg. Co. v. Storen*, 304 U.S. 307 (1938), *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434 (1939), *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653 (1948), noting that "[i]n all three of these cases, the Court struck down a state tax scheme that might have resulted in the double taxation of income earned out of the State and that discriminated in favor of intrastate

over interstate economic activity." *Wynne*, 135 S. Ct. at 1795.

In *Wynne*, this Court applied the Commerce Clause's "internal consistency" test to strike down the burdensome tax scheme. The Court stated that "[t]his test, which helps courts identify tax schemes that discriminate against interstate commerce, 'looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate.'" *Id.* at 1802 (quoting *Oklahoma Tax Comm'n*, 514 U.S. at 179). The complex Massachusetts tax scheme under the Tax Rule fails the internal consistency test. If every state imposed a regime like the Tax Rule, a taxpayer who confined her activity to one State would pay a single tax on her income to the State where she was a resident and in which she earned the income. By contrast, the taxpayer who ventured across state lines to earn her income would pay a double tax on such income, one to her State of residence and another to the State in which she earned the income. As a result, "interstate commerce would be taxed at a higher rate than intrastate commerce." *Id.* at 1791. And if every State passed a rule similar to the Tax Rule, the free movement of workers, goods, and services across state borders would suffer, as individuals would be less inclined to move between States or accept flexible working assignments. The Commerce Clause prevents precisely this type of "economic Balkanization." *Id.* at 1794.

Finally, the Tax Rule fails *Complete Auto*'s fourth prong, which requires the state tax to be "fairly related to the services provided by the State." 430 U.S. at 279. This prong mandates that "the measure of the tax be reasonably related to the extent of the contact, since it is the activities or presence of the taxpayer in the State that may properly be made to bear a just share of state tax burden." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981) (citation omitted). Under the Tax Rule, New Hampshire residents are taxed as though they are travelling to and working in Massachusetts—even if they never set foot in the State. The Tax Rule thus is not in "proper proportion" to New Hampshire residents' "activities within [Massachusetts] and, therefore, to their consequent enjoyment of the opportunities and protections which the State has afforded in connection with those activities." *Id.* (citation omitted). Because Massachusetts' tax is not "assessed in proportion to a taxpayer's activities or presence in a State," the Tax Rule unconstitutionally requires New Hampshire residents to "shoulder[] [more than their] fair share." *Id.* at 627.

The Tax Rule violates the Due Process Clause for similar reasons. Due process "centrally concerns the fundamental fairness of governmental activity." *N.C. Dep't of Rev.*, 139 S. Ct. at 2219. The Court has long recognized that the Due Process Clause prohibits a State from "tax[ing] value earned outside its borders." *Allied-Signal Inc.*, 504 U.S. at 778 (1992). That is because the "seizure of property by the State under pretext of taxation when there is no jurisdiction

or power to tax is simple confiscation and a denial of due process of law." *Miller Bros. Co.*, 347 U.S. at 342.

To survive a challenge under the Due Process Clause, there must be "'some definite link, some minimum connection, between a [S]tate and the person, property or transaction it seeks to tax.'" *Allied-Signal Inc.*, 504 U.S. at 777 (quoting *Miller Brothers Co.*, 347 U.S. at 344-45). In the case of a tax on an activity, "there must be a connection to the *activity itself*, rather than a connection only to the *actor*, the State seeks to tax." *Id.* at 778 (emphasis added). In addition, the "income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." *Moorman Mfg. Co.*, 437 U.S. at 273 (citation omitted). If the connection is too attenuated, the state tax will violate the Due Process Clause. *See id.*

The Tax Rule violates these fundamental requirements of due process. It requires no connection between Massachusetts and the nonresidents on whom it imposes Massachusetts income tax other than the address of the nonresident's employer. Put differently, the Tax Rule simply bears no "fiscal relation to [the] protection, opportunities and benefits given by the state." *Wisconsin*, 311 U.S. at 444. New Hampshire residents earning a living from home offices in New Hampshire are not protected by Massachusetts police, fire, and rescue services, do not seek education or housing opportunities provided by Massachusetts, and do not enjoy the benefits of Massachusetts roads, public transportation, or utilities. They do not "earn" income "in

Massachusetts" any more than an outsourced customer service operator in a foreign country "earns" income "in the United States" by working for a U.S.-based employer. The Tax Rule violates the Due Process Clause too.

B. No Alternative Forum Exists to Resolve These Issues.

The Court also should exercise its original jurisdiction over this case because there is no "alternative forum in which the issue tendered can be resolved." *Mississippi v. Louisiana*, 506 U.S. at 77. Under federal law, this Court has "exclusive jurisdiction" over "all controversies between two or more States." 28 U.S.C. §1251(a). This statutory command is inflexible. As the Court has explained, any argument that another court could hear a dispute between two States "founders on the uncompromising language of 28 U.S.C. §1251(a), which gives to this Court 'original and *exclusive* jurisdiction of all controversies between two or more States." *Mississippi v. Louisiana*, 506 U.S. at 77 (quoting 28 U.S.C. §1251(a)) (emphasis in original). Simply put, this Court is the *only* forum in which New Hampshire can bring its claims. *Id.*; *see also Nebraska v. Colorado*, 136 S. Ct. 1034, 1034 (2016) (Thomas, J., dissenting) ("Federal law is unambiguous: If there is a controversy between two States, this Court—and only this Court—has jurisdiction over it.").

In addition, to New Hampshire's knowledge, there are no other cases in which this issue is currently being litigated. *Wyoming v. Oklahoma*, 502 U.S. at 451-52 (finding original jurisdiction because

"no pending action exists to which we could defer adjudication on this issue"). Nor is any federal district court likely to take up this issue. That is because the Tax Injunction Act generally prohibits "district courts" from "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law." 28 U.S.C. §1341. This law, however, "by its terms only applies to injunctions issued by federal district courts" and thus is inapplicable to this original action. *Maryland v. Louisiana*, 451 U.S. at 745 n.21.

It is possible that an individual from New Hampshire might challenge the Tax Rule through the administrative remedies provided by Massachusetts. *See* M.G.L.c. 62C, §§37, 39. But this is not a sufficient alternative. Again, to New Hampshire's knowledge, no such suit has occurred, which weighs heavily in favor of this Court's original jurisdiction. *See Wyoming v. Oklahoma*, 502 U.S. at 451-52 (examining whether there were any "pending action" raising the issues). There also are clear disincentives to bringing such a challenge, as it would have to be litigated through the Massachusetts administrative process and in a Massachusetts court, and any taxpayer who might bring the claim would either have to refuse to pay the tax in question and risk incurring tax penalties or pay the tax and hope that it can be recouped at the end of the litigation. And even if an individual taxpayer did challenge the tax, this would not help the tens of thousands of New Hampshire residents who lack the means to bring such a suit.

More fundamentally, however, any such challenge would not redress New Hampshire's own

injuries. As explained, the Tax Rule is causing injuries specific to the State of New Hampshire—not just to individual taxpayers—and this Court is the *only* forum in which New Hampshire can bring its claims. This Court has original jurisdiction over disputes between the States precisely to avoid one State deciding these types of issues through its own courts. Indeed, "one of the most crying evils" of the Articles of Confederation was their failure to guarantee an adequate forum for peacefully resolving interstate disputes. *Rhode Island v. Massachusetts*, 37 U.S. 657, 728 (1838). The Founders deemed this Court's original jurisdiction over such disputes as "essential to the peace of the union." The Federalist No. 80, at 535 (A. Hamilton) (Cooke, ed., 1961). The Court should exercise its original jurisdiction over this interstate dispute.

II. Alternatively, the Court Should Hear the Case Because the Court's Original Jurisdiction Over Interstate Disputes Is Mandatory.

In the alternative, the Court should grant leave to file the bill of complaint because the Court lacks discretion to decline review in cases within its original jurisdiction that arise between two or more States.

The Constitution establishes this Court's original jurisdiction in mandatory terms. Article III states that "[i]n all cases . . . in which a State shall be [a] Party, the supreme Court *shall* have original Jurisdiction." U.S. Const., art. III, § 2, cl. 2 (emphasis added). As Chief Justice John Marshall long ago explained, the Supreme Court has "no more right to

decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). Ever since, this Court "has cautioned" that "[j]urisdiction existing, . . . a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)).

The Court's original jurisdiction over disputes between States is also "exclusive." 28 U.S.C. §1251(a). If this Court does not exercise jurisdiction over a controversy between two States, "then the complaining State has no judicial forum in which to seek relief." *Arizona v. California*, 140 S. Ct. 684, 685 (2020) (Thomas, J., dissenting). "Denying leave to file in a case between two or more States is thus not only textually suspect, but also inequitable." *Id.*

This Court has relied on "policy considerations" for "transforming its mandatory, original jurisdiction into discretionary jurisdiction." *Nebraska v. Colorado*, 136 S. Ct. at 1035 (Thomas, J., dissenting). And it has invoked its "increasing duties with the appellate docket," *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976), and its "structur[e] . . . as an appellate tribunal," *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 (1971). But the Court has "failed to provide any analysis of the Constitution's text to justify [its] discretionary approach." *Arizona v. New Mexico*, 140 S. Ct. at 685 (Thomas, J., dissenting). A proper textual analysis of this question compels the

conclusion that this Court's original jurisdiction over these types of disputes is not discretionary.

Stare decisis does not support retaining this flawed approach. "The doctrine is at its weakest when [the Court] interpret[s] the Constitution . . . because only this Court or a constitutional amendment can alter [such] holdings." *Knick v. Township of Scott, Pa.*, 139 S. Ct. 2162, 2177 (2019). The Court's treatment of original jurisdiction as discretionary has not created "reliance interests." *Id.* at 2179. And, moreover, the Court's caselaw lacks "consistency" with the Court's long-recognized requirements that courts have a virtually unflagging duty to exercise the jurisdiction granted to them. *Sprint Commc'ns, Inc.,* 571 U.S. at 77.

Because the Court's discretionary approach is "at odds with the statutory text" of 28 U.S.C. §1251(a) and is based on "policy judgments that are in conflict with the policy choices that Congress made," the doctrine "bears reconsideration." *Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting). The Court should grant the motion for leave to file the bill of complaint.

CONCLUSION

For these reasons, New Hampshire respectfully requests that the Court grant the Motion for Leave to File a Bill of Complaint.

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October 19, 2020