Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
Timothy Sandefur (033670)
Matthew Miller (033951)
500 E. Coronado Rd.
Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA
IN THE ARIZONA TAX COURT

HAROLD VANGILDER; DAN NEIDIG; and ARIZONA RESTAURANT ASSOCIATION

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF REVENUE; PINAL COUNTY; PINAL COUNTY REGIONAL TRANSPORTATION AUTHORITY

Defendants.

Case No. TX2017-000663

MOTION FOR PRELIMINARY INJUNCTION

(The Honorable Christopher Whitten)

Plaintiffs hereby move for a preliminary injunction. Plaintiffs base this motion on Ariz. R. Civ. P. 65, A.R.S. § 12-166, Ariz. R. Tax Ct. 2, and Maricopa Cnty. Super. Ct. Local Prac. R. 3.2, as well as the following memorandum of points and authorities and all other pleadings and papers filed in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case challenges the legality of Pinal County's recently enacted Transportation Excise Tax, on the grounds that it exceeds the County's statutory authority under A.R.S. § 42-6106, and violates the Uniformity and Special Law Clauses of the Arizona Constitution. Plaintiffs also seek declaratory relief as to *what* exactly is subject to the tax.

Unfortunately, timing has now become critical. The tax was approved by Proposition 417 at the November 2017 election. Plaintiffs filed suit December 20, 2018, and Defendants answered on January 10 and 24, 2018. **Arizona law mandates that the tax shall be collected beginning on April 1, 2018.** *See* A.R.S. § 48-5314(I). On February 22, 2018, Defendant Pinal County Regional Transportation Authority ("RTA") adopted Resolution 2018-01 (attached hereto as Exhibit 1) instructing Defendant Arizona Department of Revenue ("DOR") to begin collecting the tax April 1. Given the rapidity with which that date is approaching, and considerable uncertainty regarding the nature of the tax, it is imperative that this Court issue an order enjoining Defendants from taking steps toward implementation of the tax before this Court has time to address the merits of Plaintiffs' complaint.

I. STATEMENT OF FACTS

Aiming to raise revenue to provide for infrastructure improvements in Pinal County, Defendant RTA, acting pursuant to A.R.S. § 42-6106, approved Resolution 2017-01 on June 5, 2017, to refer a transportation excise tax to the voters for approval as Proposition 417. *See* Exhibit A to Plaintiff's

Complaint (Compl. Ex. A). That Resolution stated that the tax would be levied "at a rate equal to one-half percent (0.005%) [*sic*[1]] of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail; provided that such rate shall become a variable or modified rate such that when applied in any case when the gross income from the sale of a single item of tangible personal property exceeds ten thousand dollars ($10,000) … and above ten thousand dollars ($10,000), the measure of tax shall be at a rate of zero percent (0%) … ." *Id.* at 2.

The RTA then distributed to voters a publicity pamphlet and sample ballot for the November 7, 2017 election. That pamphlet stated that "[i]f Proposition 417 is approved," the tax "would be levied and collected" as follows:

> • At a rate of ten percent of the transaction privilege tax rate … to each person engaging or continuing in the County in a business taxed under A.R.S. Title 42, Chapter 5, Article 1. Such rate would be applied generally as follows:
>
> o 1/2 of 1% for the following business classifications identified in A.R.S. Title 42, Chapter 5, Article 2:
> - Transporting classification;
> - Utilities classification;
> - Telecommunications classification;
> - Pipeline classification;
> - Private car line classification;
> - Publication classification;
> - Job printing classification;
> - Prime contracting classification;
> - Amusement classification;
> - Restaurant classification;
> - Personal property rental classification;
> - Retail classification and amounts equal to retail transaction privilege tax due pursuant to A.R.S. Section 42-5008.01;
>
> o 11/20 of 1% for the following business classifications … :
> - Transient lodging classification;
> - Online lodging marketplace classification;

[1] This is evidently a scrivener's error. The actual language of Proposition 417 as it appeared on the ballot correctly stated "one-half percent (0.5%)."

o 5/16 of 1% for the mining classification … ;

- At a rate of ten percent of the rate prescribed by A.R.S. Section 42-5352(A), relating to the jet fuel excise tax; and
- On the use or consumption of electricity or natural gas by retail electric or natural gas customers in the County who are subject to the use tax under A.R.S. Section 42-5155 … ."

Compl. Ex. B at 14-15.

The language of Proposition 417 itself, however, differed from the publicity pamphlet. It resembled the language approved in Resolution 2017-1. It stated that the tax would be imposed "at a rate equal to one-half percent (0.5%)" on the "gross income from the business activity [of] every person engaging or continuing in the business of selling tangible personal property at retail," up to the $10,000 threshold. *See id.* at 18.

The publicity pamphlet also stated that "[i]f Proposition 417 is approved by the voters, the Transportation Excise Tax would commence on April 1, 2018." *Id.* at 14. The text of Proposition 417 itself specified no commencement date, but A.R.S. § 48-5314(I) provides for the April 1 date.

Proposition 417 was approved at the November 7, 2017 special election. *See* Pinal County Election Results 2017.[2]

Plaintiffs are taxpayer-residents of Pinal County and businesses doing business in Pinal County who will be liable to pay the Proposition 417 tax and/or to collect that tax for remittance to the authorities, in cases where the tax applies. Compl. ¶¶ 2–4. They brought this lawsuit seeking declaratory relief as to when and to what the tax applies, as well as permanent injunctive relief enjoining enforcement of Proposition 417 on grounds that it violates statutory and constitutional requirements. *Id.* ¶ 1. Specifically, Plaintiffs allege that substantial uncertainty exists as to what exactly is subject to the

[2] http://www.pinalcountyaz.gov/elections/Documents/PastCanvasses/2017Nov7-SpecialElectionCanvass.pdf

tax: retail sales only, which is prohibited by A.R.S. § 42-6106, but which the voters did not approve—or all tax classifications, as that statute requires, but which the voters did not approve. Compl. ¶¶ 11-14, 19.

Plaintiffs contend that Proposition 417 exceeds the County's authority under A.R.S. § 42-6106 because it purports to tax only retail items rather than all of the items that the statute mandates be taxed. *Id.* ¶ 24. **Defendant DOR concedes this point.** *See* DOR Ans. ¶ 15. Plaintiffs also contend that Prop. 417 creates a new tax classification instead of a variable rate, Compl. ¶¶ 25-26, and arbitrarily excludes sales over $10,000 from taxation, in violation of statute. *Id.* ¶ 25. Plaintiffs also contend that Prop. 417 violates the Special Law Clause of the Arizona Constitution and the Equal Protection Clauses of the state and federal constitutions. Compl. ¶¶ 33-39.

On February 22, 2018, Defendant RTA approved Resolution 2018-01, instructing the DOR to begin implementing the tax as of April 1, 2018. Ex. 1. That Resolution instructs the DOR to collect "as set forth in the Publicity Pamphlet," or "as set forth in the Election Materials," *id.* at 3–4, and *not* as set forth in the language of Prop. 417 that the voters actually approved.

Given the need to preserve the status quo pending resolution of the merits of this case, Plaintiffs move that **a temporary injunction issue barring Defendant DOR from acting on on that resolution.**

II. STANDARD OF REVIEW

To obtain a preliminary injunction, the movant must show (a) a strong likelihood of success on the merits, (b) the possibility of irreparable injury if an injunction is not granted, (c) the balance of hardships favors the movant, and (d) public policy favors the grant of an injunction. *Arizona Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12 ¶ 12, 219 P.3d 216, 222 (App. 2009). A court may apply a "sliding scale" in determining whether the movant has satisfied this test. *Id.* For example, the movant "may establish either (1) probable success on the merits and the possibility of

irreparable injury; or (2) the presence of serious questions and [that] 'the balance of hardships tip[s] sharply' in favor of the moving party." *Id.* (citation omitted). The "critical element" in all of this "is the relative hardship to the parties." *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990).

These factors are all present here, and the Court should grant a temporary injunction barring enforcement of Proposition 417 pending resolution of this case. As discussed further in Section IV, Arizona's general anti-injunction rule (A.R.S. § 42-11006) does not bar the temporary injunctive relief sought here because Plaintiffs are not seeking to bar the collection of "an imposed" tax.

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS BECAUSE SUBSTANTIAL UNCERTAINTY EXISTS AS TO WHAT EXACTLY PROPOSITION 417 WILL TAX AND BECAUSE IMPOSING A TAX THAT LACKS VOTER APPROVAL IS UNLAWFUL

It is unclear—both to Plaintiffs and the DOR—*what* exactly Proposition 417 taxes will be imposed upon. The text of Proposition 417 that voters actually approved says that it applies only to *retail transactions of tangible personal property* (below $10,000). Compl. Ex. B at 18. But the publicity pamphlet states otherwise: it says the tax applies to all of the listed business classifications at the specified amounts: on Transporting, Utilities, Telecommunications, Pipelines, Private car lines, Publications, Job printing, Prime contracting, Amusement, Restaurants, etc. Compl. Ex. B at 14-15.

This list conforms to the list of tax classifications that the County *must* tax pursuant to A.R.S. § 42-6106(B) ("The tax *shall* be levied and collected" upon *all* listed classifications), and that is what RTA has now instructed DOR to do. But the voters did *not* consider or approve that, and that instruction is therefore not authorized by A.R.S. § 42-6106(A) ("*If approved by the qualified electors* … ." (emphasis added)).

In other words, the tax on retail items which the voters approved in Proposition 417 is not

consistent with the authorizing statute. Yet the tax on all statutory classifications, which is required by A.R.S. § 42-6106—and which the RTA's February 22, 2018 Resolution asks the DOR to begin collecting—was *not* approved by the voters.

This is problematic for two reasons. First, A.R.S. § 42-6106 provides the *sole* basis for the imposition of a county transportation excise tax, so Proposition 417's purported limitation of the tax to only retail personal property sales below $10,000 renders that tax *ultra vires* and therefore illegal, as pleaded in the Complaint, ¶¶ 22-27. The County derives all of its taxing power from this statute. *Arizona Dept. of Revenue v. Arizona Public Serv. Co.*, 188 Ariz. 232, 235, 934 P.2d 796, 799 (App. 1997). But A.R.S. § 42-6106(B) provides that if and when a county adopts a transportation excise tax, "the tax *shall* be levied and collected" on all classifications listed in the statute, *not* just on retail sales of tangible personal property below $10,000. Counties have no discretion to choose what to tax and what not to tax. Thus the tax on *retail sales only*, which was approved by the voters as Proposition 417, is unlawful. *Defendant DOR admits this* in its answer to the Complaint at ¶ 15.

As for the RTA's Resolution 2018-01, instructing the DOR to tax *all* the classifications "as set forth in the Election Materials," (Compl. Ex. A at 4) it cannot remedy the problem, because the voters did *not* approve that—and A.R.S. § 42-6106(A) requires that the tax be "approved by the qualified electors" before the tax may be collected. Plainitffs are therefore likely to prevail on this cause of action.

This discrepancy between, on one hand, the tax the voters approved, but which violates the statute—and, on the other, the tax described in the Election Materials, and which is required by A.R.S. § 42-6106, but which the voters did *not* approve, creates extraordinary confusion that renders it impossible for Plaintiffs to know what is and is not taxed.

It is unclear, for example, whether the tax will apply to the members of the Plaintiff Restaurant Association, or to what degree. In their answer, Defendant DOR "affirmatively alleges that only

businesses in the retail classification would be subject to the Tax, *which does not include businesses in the restaurant classification*," DOR Answer ¶ 11 (emphasis added). DOR reiterates this when it "interprets Proposition 417 as attempting to enact a tax *using the existing retail classification* which then attempts to exempt from taxation certain revenues." *Id*. ¶ 15. And, indeed, the language of Prop. 417, which voters actually approved says the tax will be levied only on *retail sales* up to $10,000. Yet Resolution 2018-01 now instructs the DOR to levy the tax upon all classifications specified in A.R.S. § 42-6106(B), *including* restaurants—as stated in the ballot pamphlet, but *not* as approved by the voters. Ex. 1 at 2.

Consequently, Plaintiff Arizona Restaurant Association faces substantial uncertainty about whether its members will be required to collect, account for, and remit the tax. It is also unclear whether Plaintiff Vangilder and other individual taxpayers will have to pay tax on things other than retail sales, such as when they purchase a meal or transient lodging. Plaintiffs will expose themselves to legal sanctions if they fail to collect the proper tax—but also face a loss of business and reduction in income if they collect taxes that are not legally required.

This uncertainty over what is and is not taxed is grounds for declaratory relief. *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 645 P.2d 801 (1982); *Crane Co. v. Arizona State Tax Comm'n*, 63 Ariz. 426, 446–48, 163 P.2d 656, 664–65 (1945). Plaintiffs are therefore substantially likely to prevail on Count One of their Complaint. But given that the County's Resolution 2018-01 instructs the DOR to begin tax collection on April 1 (Ex. 1 at 2), this Court needs time to evaluate the merits of these claims. At a minimum, this uncertainty is grounds for this Court to issue an order maintaining the *status quo* pending resolution of this case.

II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR STATUTORY AND CONSTITUTIONAL CHALLENGES TO PROPOSITION 417

A. The $10,000 Cutoff Violates A.R.S. § 42-6016 Because it Creates What is, in Substance, a New Tax Classification, Not a "Variable Rate"

Plaintiffs are likely to prevail on their statutory cause of action for another reason: Proposition 417 does not establish a "variable rate" as authorized by A.R.S. § 42-6016 but instead creates a separate *classification,* falsely described as a variable rate. A variable rate is a rate that varies in relation to some other thing, such as a variable rate mortgage which varies in accordance with an interest rate, or an income tax, which varies with relation to a person's income. *See* BLACK'S LAW DICTIONARY 813, 1553 (6th ed. 1990). For instance, federal regulations define a "variable rate" as a rate that depends on a multiplier, or an average. 26 C.F.R. § 1.860G-1(a)(3). *See also Rubio v. Capital One Bank (USA), N.A.*, 572 F. Supp. 2d 1157, 1164 (C.D. Cal. 2008), (interest rate was not a variable rate where it was "[not] tied to an index or formula."). Proposition 417 does not vary with anything. It imposes a single 0.5% tax on retail transactions below $10,000. That is not a *variable* rate. Instead, it creates a new tax *classification* (*i.e.,* retail items above $10,000) at the county level—which exceeds the County's statutory authority.

B. The $10,000 Cutoff Violates the Special Law Clause and the Equal Protection Clauses

The Arizona Constitution forbids "special laws," particularly with regard to the "[a]ssessment and collection of taxes." ARIZ. CONST. art. IV pt. 2 § 19. A special law is a law that favors one group and disfavors others without adequate justification. *Gallardo v. State,* 236 Ariz. 84, 88 ¶ 10, 336 P.3d 717, 721 (2014). A law is a special law if it lacks a rational relationship to a legitimate objective, or if it creates a class of beneficiaries that are not similarly situated, or if the classification is inelastic, so that other individuals or entities can neither enter or leave that class. *Id.* ¶ 11. If a law fails *any* of these

three elements of the test, it violates the Special Law Clause.

In addition, the Equal Protection Clauses of the state and federal constitutions (ARIZ. CONST. art II § 13; U.S. CONST. amend XIV § 1) forbid the government from differentiating between people without a rational basis for such distinctions. If, as in this case, the classification is "non-suspect," a difference in treatment is unconstitutional if it bears no rational connection to a legitimate government interest. *Fowler Packing Co. v. Lanier,* 844 F.3d 809, 815 (9th Cir. 2016).

The Special Law and the Equal Protection Clauses can overlap, but are different—and "a statute that does not violate equal protection may still be an invalid special law." *Tucson Elec. Power Co. v. Apache Cnty.*, 185 Ariz. 5, 12, 912 P.2d 9, 16 (App. 1995); *Republic Inv. Fund I v. Town of Surprise*, 166 Ariz. 143, 149, 800 P.2d 1251, 1257 (1990). Indeed, Special Laws are subject to a "heightened" version of the rational basis test. *Id.*

Prop. 417 violates both the Equal Protection and Special Law Clauses. The RTA is seeking to impose the tax on only retail transactions up to the value of $10,000. That is an arbitrary threshold which does not advance the County's purported interest in generating revenue for infrastructure. On the contrary, that dollar amount was chosen solely for the purpose of ensuring that the tax would not fall on businesses that sell retail items at above $10,000—for example, cars—and which would therefore be likely to oppose Prop. 417 at the election. Compl. ¶ 31. Such a lack of a fit between the purpose of infrastructure improvement and the means chosen to achieve that purpose creates an arbitrary special exemption in violation of the Equal Protection Clause.

In *Fowler Packing Co.*, the Ninth Circuit invalidated a California law aimed at remediating under-payment of certain workers, because it included a carve-out that barred a few employers from benefiting from its protections. The court found that this "was a result of 'closed negotiations' between the [state], labor unions … , and employer groups," and was designed "as [a] necessary condition[] to

obtain [union] support for the [statute]" in the legislature. 844 F.3d at 814. But "procur[ing] the support of the [union]" was not a rational basis; it was an "illegitimate purpose." *Id.* at 815.

Prop. 417's $10,000 threshold does not exist to advance the County's legitimate interest in infrastructure improvement, but instead was tailored to avoid political opposition from powerful businesses, precisely as with the statute in *Fowler Packing*. It is invalid for the same reason.

The $10,000 carve-out also violates the Special Law Clause. In *State v. Levy's*, 119 Ariz. 191, 580 P.2d 329 (1978), the Arizona Supreme Court invalidated a statute that exempted from taxation sales of less than $1,000 to Mexican residents within a 30 mile range of the Mexican border. It found that the tax was a special or local law with regard to taxation, and that there was no rational basis for the difference in treatment. The purpose of the law was to aid businesses that had suffered an adverse impact from a change in the value of the peso, *id.*—but that adverse impact was felt by businesses throughout the state, the court noted. *Id.* at 192, 580 P.2d at 330. Although the Court "acknowledged that the border businesses have a more acute problem," it declared the exemption an unconstitutional special law because it "does not treat all [businesses] in the same fashion," but was "based on an arbitrary line." *Id.* at 192–93, 580 P.2d at 330–31.

In *Town of Surprise*, the Court declared a law that allowed courts to order land de-annexed from certain municipalities invalid under the Special Law Clause, even though it satisfied the Equal Protection Clause's rational basis test. 166 Ariz. at 151, 800 P.2d at 1259. Because "[t]he statute was enacted in response to the abuse of the municipalities' power to strip annex," it should have "include[d] all cities where annexation abuses may have occurred." *Id.* Instead, it only applied to 12 cities, and therefore "[did] not apply uniformly to all members of the class." *Id.* And in *Tucson Elec. Power Co.*, the court found that a tax violated both the Special Law and Equal Protection Clauses because it applied only to mining and utility classifications, not to other classifications. 185 Ariz. at 9, 912 P.2d at 13.

Here, the $10,000 carve-out is a Special Law with regard to taxation. The problems Prop. 417 aims at—as described in the publicity pamphlet—relate to infrastructure. *See* Compl. Ex. B at 5 (citing "roadway and public transportation projects" and "mobility needs."). This purpose is not served by an arbitrary cut-off at $10,000. While the County may "'legitimately' classify by population" or other factors, any such classifications "must encompass all members of the 'relevant' class." *Tucson Elec. Power Co.*, 185 Ariz. at 13; 912 P.2d at 17. Just as taxing mining and utility differently than other businesses was unconstitutional—because there was no "rational basis … for insulating similarly situated owners of non-mining and non-utility property from the imposition of such rates," *id.* at 14, 912 P.2d at 18—there is no legitimate basis for limiting this county-wide tax at the $10,000 amount.

Instead, that arbitrary cut-off was designed to prevent political opposition to Prop. 417 by businesses that sell items above that price level. That is not an adequate rational basis under Equal Protection, *Fowler Packing Co., supra*, or the Special Law Clause. Plaintiffs are likely to prevail on Counts Three and Four.

III. PLAINTIFFS FACE IRREPARABLE INJURY ABSENT INJUNCTIVE RELIEF

A. The Parties' Substantial Uncertainty as to How Proposition 417 Shall Be Implemented, As Well as Plaintiffs' Inestimable Risk of Monetary Harm and Penalties Absent Injunctive Relief, Qualify as Irreparable Injuries

In the absence of preliminary injunctive relief, the Plaintiffs will suffer irreparable injury. Especially given the substantial uncertainty about what exactly the tax will be levied upon and the fact that April 1, 2018 is now only weeks away, it would be prudent for this Court to bar Defendants from taking steps to implement Proposition 417 until the causes of action in the complaint can be fully resolved.

Irreparable injury occurs where it is difficult to estimate the potential monetary harm, *Hayois v. Salt River Valley Canal Co.*, 8 Ariz. 285, 290, 71 P. 944, 945 (1903); *Danielson v. Local 275, Laborers*

Int'l Union of N. Am., 479 F.2d 1033, 1037 (2nd Cir. 1973), or where damages will not address the full harm suffered. *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 65 ¶ 11, 263 P.3d 69, 73 (App. 2011). Thus an injunction "may be appropriate to prevent a loss of potential customers." *Id.* ¶ 12.

It is particularly difficult to estimate the potential losses to the Plaintiffs here. Plaintiffs Restaurant Association and Dan Neidig face a potential loss of customers as a result of the tax, because they will be forced to raise their prices and begin accounting for and remitting tax receipts in the event that they are deemed subject to the tax—yet they cannot know for certain, since it is unclear how and on what the tax will be imposed. They also face a significant risk of cost, time, confusion, and potential legal consequences if they fail to satisfactorily comply with the statute by collecting the required tax in the required manner. To allow the Court time to consider the merits of this complicated case, a temporary injunction is appropriate. *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.").

B. The balance of hardships favors the issuing of an injunction

The balance of hardships tips plainly in favor of temporary injunctive relief. If an injunction is not granted, the Plaintiffs will be forced to decide whether to raise their prices and begin collecting and accounting for a tax that must be remitted to the DOR beginning April 1, in order to avoid the potential legal penalties and financial harm that would result if they failed to comply with Arizona tax laws. If taxes are collected which are later deemed to not be due, they and presumably their customers would be forced to undertake a complicated and slow refund process. In the meantime, Plaintiffs would also suffer a loss of business opportunities and an incalculable loss of income. On the other hand, if the injunction is granted, the RTA will suffer a loss of tax revenue pending the outcome of this case—

although it would be free to collect further taxes by approving such an extension pursuant to Arizona law. That is insufficient to outweigh the hardships suffered by the Plaintiffs in the absence of an injunction. *Kansas City, Kan. Fraternal Order of Police, Lodge No. 4 v. City of Kansas City*, 620 F. Supp. 752, 765–66 (D. Kan. 1984).

IV. PUBLIC POLICY FAVORS THE ISSUING OF AN INJUNCTION AND THERE IS NO STATUTORY BAR TO TEMPORARY INJUNCTIVE RELIEF

Public policy strongly favors an injunction in this case. The confusion over the timing and the subject of the Prop. 417 tax is significant, and will have a major impact on businesses in Pinal County. Moreover, if Defendants are permitted to create new tax classifications at the County level, that will have major consequences throughout Arizona, as it will result in a patchwork of taxation in the state. A preliminary injunction will maintain the status quo to permit this Court to resolve the dispute.

Finally, there is no legal barrier to an injunction here. Arizona's general anti-injunction rule, A.R.S. § 42-11006, applies only to *property* taxes, which Proposition 417 is not. It also only bars injunctions against the collection of "an imposed or levied" tax, and no tax has yet been imposed, and no *levied* tax is being challenged. Instead, this case challenges the validity of Proposition 417 generally. Second, that anti-injunction rule appears in Chapter 11 of Title 42, and is thus confined to property taxes; it does not apply to county transportation excise taxes.

Third, while courts are reluctant to enjoin tax measures prior to collection of the tax, *State ex rel. Lane v. Superior Ct. In & For Maricopa Cnty*., 72 Ariz. 388, 391, 236 P.2d 461, 462–63 (1951), there is an exception for cases such as this: where the tax is levied "without semblance of authority 'and resulting injury cannot be adequately provided by proceedings at law.'" *Church of Isaiah 58 Project of Ariz., Inc. v. La Paz Cnty.*, 233 Ariz. 460, 464–65, 314 P.3d 806, 810–11 (App. 2013) (quoting *Crane Co. v. Arizona State Tax Comm'n*, 63 Ariz. 426, 445, 163 P.2d 656, 664 (1945)). That is the case here:

as detailed above, the County has no authority to adopt the Proposition 417 tax, and the uncertainty and the irreparable injury Plaintiffs will suffer from its enforcement mean that no legal remedy exists. An injunction is therefore proper.

CONCLUSION

The Court should grant the motion and enjoin Defendant DOR from acting to implement Proposition 417 in accordance with or in response to Resolution 2018-01.

RESPECTFULLY SUBMITTED this 26th day of February, 2018 by:

/s/ Timothy Sandefur
Timothy Sandefur (033670)
Matthew Miller (033951)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 26th day of February, 2018, with a copy delivered via the ECF system to:

MARK BRNOVICH
Attorney General
Scott G. Teasdale
Jerry A. Fries
Assistant Attorneys General
2005 North Central Avenue
Phoenix, Arizona 85004-1592
tax@azag.gov
Attorneys for Defendant Arizona Dept. of Revenue

Joseph A. Kanefield
Chase Bales
Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
kanefieldj@ballardspahr.com
balesc@ballardspahr.com
Attorneys for Defendants Pinal County and
Pinal Regional Transportation Authority

Chris Keller
Chief Civil Deputy
Office of the Pinal County Attorney, Kent Volkmer
P.O. Box 887
Florence, Arizona 85132
Chris.Keller@PinalCountyAZ.gov
Attorney for Pinal County

William J. Sims III
Sims Murray, Ltd.
3101 North Central Avenue, Suite 870
Phoenix, Arizona 85012
wjsims@simsmurray.com
Attorney for Pinal Regional Transportation Authority

/s/ Kris Schlott
Kris Schlott, Paralegal