IN THE SUPREME COURT

STATE OF ARIZONA

HAROLD VANGILDER; DAN NEIDIG; and ARIZONA RESTAURANT ASSOCIATION, Plaintiffs/Appellees/ Cross-Appellants, v. ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellee, PINAL COUNTY and PINAL REGIONAL TRANSPORTATION AUTHORITY Defendants/Appellants/ Cross-Appellees.	Supreme Court No. CV-20-0040-PR Court of Appeals, Division One Case No. 1 CA-TX 19-0001 Maricopa County Tax Court Case No. TX2017-000663

PLAINTIFFS/APPELLEES/CROSS-APPELLANTS' RESPONSE TO *AMICI CURIAE* BRIEF

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INTRODUCTION

Much of the *amici* brief of the Town of Queen Creek, et al. (Am. Br.), is devoted to arguing that municipalities need to fund improvements to their infrastructure. The Taxpayers do not deny this, or that the County can impose a transportation excise tax pursuant to A.R.S. §§ 42-6106 and 48-5314 to fund such improvements. But the County did not do so in this case. Instead, it adopted a retail-only sales tax—which it later claimed was a Transaction Privilege Tax (TPT)—and included in it an unlawful carve-out whereby the first $10,000 of a single retail item is taxed, and amounts above that are not. Such a tax is unlawful. Much of the *amici*'s argument to the contrary has already been addressed in the briefs of Taxpayers and the Department of Revenue (ADOR) and those points will not be repeated here. Instead, this brief will address the *amici*'s request that the Court issue only prospective relief, Am. Br. at 16-19; that the tax is "presumptively valid," *id*. at 10; and that this case presents an untimely "election challenge." *Id.* at 11.

While there may be circumstances where equity requires a judgment to be applied only prospectively, that is not the case here because the County is not entitled to equity. (*See* below, Section I.) The County has unclean hands, and has not done equity. Also, the balance of the hardships favors the Taxpayers, not the County. (Section II). The tax is not presumptively valid because no statute

authorizes this tax, and the County only has authority if it is granted expressly by statute, or necessarily implied therefrom. (Section III). And this case is not an "election challenge" because it focuses on the invalidity of Proposition 417 as a matter of substantive law, not on any kind of procedural irregularity in the election. On the contrary, it is the County, not the Taxpayers, who contend that there was an election irregularity. (Section IV).

ARGUMENT

I. The equities favor the Taxpayers.

Much of the *amici*'s arguments boil down to a contention that they have already spent Proposition 417 revenues, or (what is effectively the same thing) budgeted on the assumption that they would receive these revenues, and that out of "equity and fairness," the Court should let them continue doing so. Am. Br. 17.

But "[a]n honorable government would not keep taxes to which it is not entitled," *Pittsburgh & Midway Coal Mining Co. v. Ariz. Dep't of Revenue*, 161 Ariz. 135, 139 (1989), and in reality, the equities favor the Taxpayers here, not the County or its *amici*. The court should therefore reject the *amici*'s appeal to equity.

Those who seek equity must do equity, *Arizona Coffee Shops, Inc. v. Phoenix Downtown Parking Ass'n*, 95 Ariz. 98, 100 (1963), and must come to the Court with clean hands. *Smith v. Brimson*, 52 Ariz. 360, 364 (1938). The County and its *amici* fail in both respects.

First, the County was aware of the legal flaws giving rise to this litigation well before the vote on Proposition 417 was held. On September 25, 2017—a month and a half before the election—the County Board of Supervisors was warned in writing that the contemplated tax would, if adopted, violate Arizona state law and expose the County to litigation. *See* IR.43 at ¶8. The County chose to ignore that letter.

Then, after this case was filed, counsel for Taxpayers and ADOR urged the County not to begin collecting the tax until this case was resolved, because doing so would expose the County to likely financial loss in the event that the tax were deemed invalid—which ADOR believes it is.[1] *See* IR.59 at 4. The County

[1] ADOR nevertheless implemented the tax, despite acknowledging that it is unlawful. In its Supplemental Brief (at 24-25) ADOR claims it had no authority to do otherwise, and therefore should not be liable for attorney fees, but this is false. ADOR has a statutory duty to provide an "integrated, coordinated and uniform system of tax administration," A.R.S. § 42-1004(A)(9), and it is expressly *not* bound by the County's assertion that the tax was lawful. *See* A.R.S. § 42-1004(C). Arizona law makes clear that *all* agencies of the state government must at all times comply with *state* law. *Brown v. State*, 117 Ariz. 476, 479 (1978) ("Obviously the Department must comply with the law."); *cf. Clay v. Ariz. Interscholastic Ass'n*, 161 Ariz. 474, 476 (1989) (agency must follow its own regulations); *Tiffany by & through Tiffany v. Ariz. Interscholastic Ass'n*, 151 Ariz. 134, 139 (App. 1986) (same). *See also Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) ("In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously."). Where a County ordinance conflicts with state law—which ADOR has always acknowledged to be the case here—the state agency must follow *state* law, not the offending ordinance. ADOR chose to disregard this duty and instead implement an ordinance it knew to be unlawful. What's more, ADOR went out of its way to ensure that the unlawful tax would be collected even after the Tax Court ruled it unlawful, by supporting the

disregarded this advice from the state's chief tax agency, and began collecting revenues anyway. Then, after the Tax Court ruled in favor of the Taxpayers and entered judgment against the County, the County sought a stay of that judgment so it could continue collecting revenues. IR.58. Taxpayers resisted these efforts at every step, warning the County that it would likely suffer financial difficulty if judgment were later entered against it.

Given all this forewarning, it was deeply imprudent for the *amici* to "rel[y] on the Tax as the basis for funding their infrastructure improvements." Am. Br. at 17. They cannot appeal to equity with regard to revenues that they have been aware all along are being illegally collected. *Cf.* *State Bank of Drummond v. Christophersen*, 286 N.W.2d 547, 553 (1980) ("'It is infinitely better that men should be held to the consequences of their own culpable carelessness, than that courts of equity should undertake to relieve therefrom. The rule requires reasonable caution and prudence in the transaction of business, and is deeply imbedded in our jurisprudence.'" (citation omitted))

County's motion to stay the Tax Court's judgment. It had no legal obligation to do this. *Cf.* *Cortaro Water Users' Ass'n v. Steiner*, 148 Ariz. 314, 318 (1986) ("We do not believe it is wrong for the Department to actively participate [in the lawsuit] … [but] [t]he Department's asserted position in these proceedings undoubtedly caused [plaintiff] to expend more funds than would have been necessary" otherwise). For this reason and for reasons briefed fully below, ADOR should be liable for attorney fees in the event that the Court reverses.

Nor is the burden of judgment against the County inequitable. After all, when it sought the stay of judgment, the County represented to the Tax Court that it was placing the revenues in some sort of "escrow" account, so that Taxpayers could obtain refunds if the Tax Court's judgment were affirmed on appeal.[2]

Some of the Taxpayer plaintiffs, however, such as Mr. Vangilder and Mr. Neidig, will never obtain refunds in any event, because under state law they are not deemed entitled to a refund. In other words, they and hundreds of thousands of other Pinal County residents have been forced to pay higher taxes for more than two and a half years under an illegal tax, and they will never get their money back. In short, the Taxpayers have clean hands. The County and its *amici* do not.

Moreover, equity aids the vigilant. *Browne v. Nowlin*, 117 Ariz. 73, 76 (1977). Yet during the nearly three years that this case has been pending, the County has held *six* regularly scheduled elections, at any one of which it could have placed a new transportation excise tax on the ballot—one that complied with state law. It also could have scheduled a special election for that purpose. *See* A.R.S. § 48-5314(A)(2). Had it done so, and obtained voter approval, this case would instantly have been rendered moot. But the County chose not to.[3] Given its

[2] *See* Transcript of Oral Argument on Motion for Stay, Tax Court, Nov. 15, 2018 at 12:21-25.

[3] One reason may be that, contrary to the efforts of *amici* to imply that Proposition 417 received overwhelming voter approval, it actually only prevailed by a margin

lack of vigilance, the County and its *amici* cannot appeal to equity. *Cf.* *Rodgers v. Huckelberry*, 247 Ariz. 426, 431 ¶21 (App. 2019).

II. There is no valid argument for a "prospective" ruling here.

The *amici* ask this Court to issue only prospective relief. But "[i]t is not the common practice, where the court finds a tax has been improperly imposed, to give a decision prospective effect only." *Wilderness World, Inc. v. Dep't of Revenue*, 182 Ariz. 196, 201 (1995). Although there are rare cases where equity requires courts to confine their judgments to prospective application, Arizona courts presume against doing so. *Chevron Chem. Co. v. Super. Ct.*, 131 Ariz. 431, 435–36 (1982). That is because it is usually unjust to deprive the winning party of the benefit of the judgment. Doing so also runs the risk of intruding into the realm of legislative policymaking instead of adjudication. *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 96–97 (1993).

Amici bear an especially heavy burden in appealing to equity to overcome this presumption, because Arizona courts "liberally construe statutes imposing taxes in favor of taxpayers and against the government," *State ex rel. Arizona Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶10 (2004), and recognize the right of taxpayers "'to insist upon the observance of every form

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of 901 votes, in a county with a population nearing half a million (i.e., less than 2 percent). *See* Pinal County Official Election Results, Nov. 15, 2017.

prescribed by statute which will in the least tend to protect [them].'" *Braden v. Yuma Cnty. Bd. of Supervisors*, 161 Ariz. 199, 203 (App. 1989) (citation omitted). But in the circumstances of this case, the balance of the equities favors the Taxpayers.

As noted above, the County does not have clean hands and it has not done equity. Even if that were not true, applying equity here would require "balanc[ing] the competing claims of injury and…consider[ing] the effect on each party of the granting or withholding of the requested relief," *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987), and such a comparison must tip in favor of the Taxpayers. Taxpayers have acted lawfully throughout this case. They informed the County of, and protested against, its illegal actions from before this case began. They unsuccessfully urged the County to act prudently to avoid the financial burden an adverse judgment could bring about. They opposed the efforts of both the County and ADOR to continue collecting this tax even after the Tax Court adjudged it illegal. If this Court were to do as *amici* urge, and rule that Proposition 417 is invalid, but that the County may still continue collecting the tax, then the County "would be keeping taxes to which it was not entitled," *Wilderness World*, 182 Ariz. at 201, which would not be "honorable," *Pittsburgh & Midway Coal*, 161 Ariz. at 139, and would not be equitable.

Amici say they are in need of infrastructure improvements. Taxpayers do not dispute that, but the County has adequate power to address that. For one thing, it could adopt a transportation excise tax that complies with state law. Or it could reduce spending on other matters. The "delay" of which *amici* complain, Am. Br. at 18, is—as explained above—entirely owing to the County's insistence on pursuing this unlawful tax instead of complying with the statutes.[4]

The rare cases in which equity counsels in favor of applying a ruling prospectively are those where (a) the decision departs from settled expectations by establishing a new rule, (b) applying that rule in the present case would impair the rule's operation, and (c) implementing the rule in the case *sub judice* would work an inequitable hardship. *Wilderness World*, 182 Ariz. at 201. These are called, respectively, the "reliance factor," the "purpose factor," and the "inequity factor." *Fain Land & Cattle Co. v. Hassell*, 163 Ariz. 587, 597 (1990). None of those factors exist here.

Although there has been no previous court decision declaring a tax like this one invalid under Section 48-5314, that is only because the County is the first to

[4] The County's infrastructure problems are also attributable to the fact that municipalities throughout the County have notoriously wasted revenue from taxes previously levied to pay for infrastructure, as documented in recent state Auditor General reports. *See* Office of the Auditor General, *Pinal County Transportation Excise Tax* (Report No. 16-106) June, 2016. The Court can take judicial notice of this Report and its contents under Arizona Rules of Evidence 201 and 901(b)(7)(a).

attempt this novel tax scheme. Novelty alone cannot establish a legitimate reliance interest. As Justice Scalia once remarked, "the less support exists for a [legal] claim, the less likely it is that the claim has been raised or taken seriously before, and hence the less likely that this Court has previously rejected it." *McKoy v. North Carolina*, 494 U.S. 433, 466 (1990) (Scalia, J., dissenting). The fact that there was no preexisting court decision deeming a tax like this unlawful does not mean that the County's unique and unusual interpretation of that statute constituted a reliance interest. More simply, the prospectivity/retrospectivity analysis should not function as the equivalent of the old "'one free bite' rule." *Weekly v. City of Mesa*, 181 Ariz. 159, 163 (App. 1994).

Actually, the County was aware long before this lawsuit that Section 48-5314 did not permit either a retail-only tax or the $10,000 carve-out. As *amici* Arizona Tax Research Association (ATRA), et al., note, the County lobbied for legislation in 2017 to enable them to implement such a carve-out. The Legislature rejected that—whereupon the County did it anyway. *See* Br. *Amicus Curiae* of ATRA, et al., in Support of Pet. for Review at 11-14. And, as noted above, the County was warned before the election, in September 2017, that the tax contemplated in Proposition 417 was unlawful and would incur litigation. It disregarded that warning, too. Moreover, the complaint in this case was filed even before the County began collecting the tax—yet the County proceeded to collect it

despite Taxpayers' urging. The County therefore cannot appeal to the "reliance" factor. *Hassell*, 163 Ariz. at 597.

Nor can it appeal to the "purpose factor." *Id.* On the contrary, limiting this judgment to prospective application would create precisely the sort of confusion, inequality, and administrative difficulties that both Taxpayers and ADOR have warned about. Having a special tax rule just for Pinal County, while holding the other 14 counties to the requirements of A.R.S. §§ 48-5314 and 42-6106, would be unjust to the other counties, and would create an anomalous distortion in state tax law. Indeed, depending on the scope of the contemplated prospective-only relief (a matter on which the *amici* are unclear[5]), it could violate equal protection, which cannot be remedied by limiting the relief prospectively. *See Gosnell Dev. Corp. v. Ariz. Dep't of Revenue*, 154 Ariz. 539, 541–42 (App. 1987) (violation of equal protection in tax law cannot be cured by prospective application).

[5] It is not clear what relief, exactly, the *amici* think should be prospective-only. Taxpayers advance three contentions in this case: a) that the tax is void *per se* because it applies only to retail sales, in violation of state law, b) that the $10,000 carve-out is statutorily invalid, and c) Taxpayers also seek declaratory relief as to whether the tax applies to retail sales only or to all TPT classifications. *See* IR.1 at ¶¶ 17-21. Do *amici* mean that the Court should conclude that taxes under A.R.S. §§ 42-6106 and 48-5314(A)(2) must apply to all TPT classifications in the future, but allow *this* retail-only tax to remain in place, in violation of unambiguous state law to the contrary? Do they mean that the Court should hold that the $10,000 carve-out is invalid going forward, but allow it here? How would prospectivity apply to declaratory relief here? The *amici* do not explain.

Finally, as noted above, the County and its *amici* cannot appeal to the "inequity factor," because balance of the equities favors the Taxpayers. Failing all three factors, *amici*'s prospectivity suggestion must be rejected.

In *Wilderness World*, ADOR argued that operators of amusement rafting trips fell within a tax law that applied to "any business charging admission fees for … amusement." 182 Ariz. at 198. The Court rejected this argument, whereupon ADOR asked that the ruling be applied only prospectively. *Id.* at 201. The Court declined, noting that ADOR did not genuinely rely on well-settled law when it asserted that rafting fell within the tax, and that applying the judgment to the case *sub judice* would further the purpose of the rule rather than frustrating it; the rule was "that the amusement tax does not apply to river rafting trips," so obviously applying that rule in that case furthered the purpose of rule. *Id.* It also found that there was nothing inequitable about applying the rule to the case at hand—on the contrary, not doing so would be inequitable, because then "the state would be keeping taxes to which it was not entitled." *Id.*

Precisely the same conclusion applies here. The County did not genuinely rely on Section 48-5314 in adopting its novel retail-only tax with a $10,000 carve-out. It was aware that the law did not permit this, but did it anyway. Applying a judgment against the County to this case would further the rule that the statute does not permit such taxes, and that all county transportation excise taxes should fall

under the single, uniform rule prescribed by that statute. And there is nothing inequitable about denying the County tax revenue to which it is not entitled.

Wilderness World did mention one other consideration: if applying a judgment to the case at hand would "threaten the 'financial stability of the taxing body,'" or "impair[]" its "financial integrity," there might be grounds for applying the ruling prospectively only. *Id.*; *see also Bade v. Drachman*, 4 Ariz. App. 55, 70 (1966) (where the taxing body would be "threatened with destruction."). But that was not true in that case, and it is obviously not true here. Pinal County's most recent audit found that its total assets and deferred outflows exceeded its liabilities, and that its primary sources of revenue are property taxes, operating grants, and its share of state sales taxes, not the Proposition 417 tax. *See* Pinal County, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019* at ep.24.[6] Indeed, property taxes accounted for ten times as much income to the County as did road improvement taxes. *Id.* ep.30. Finding that the Proposition 417 tax is invalid would not seriously threaten the County's financial integrity.

III. The tax is not presumptively valid.

The *amici* misstate the law when they claim that the Proposition 417 tax is entitled to a presumption of validity. Am. Br. at 10. It is not. Because "[t]he law-

[6] The Court can take judicial notice of this Report and its contents under Arizona Rules of Evidence 201 and 901(b)(7)(a).

making powers of counties in Arizona are entirely derivative," and counties "only" have those powers that are "expressly conferred on them by statute or necessarily implied therefrom," the burden is on the County, not the Taxpayers, to show that the County acted within its authority here. *Transamerica Title Ins. Co. v. Cochise Cnty.*, 26 Ariz. App. 323, 326 (1976); *Associated Dairy Prod. Co. v. Page*, 68 Ariz. 393, 395–96 (1949).

Where the presumption of validity does apply, it does so as a function of the separation of powers within the tripartite system of *state* government. In other words, it is a form of judicial restraint intended to "'minimiz[e] judicial conflicts with the legislature.'" *State v. Arevalo*, 470 P.3d 644, 647 ¶9 (Ariz. 2020) (citation omitted). No such concern is present in a case involving a *county* government, such as this one.

Here, it is the Taxpayers who seek to enforce state law—specifically, the statutes creating a uniform statewide mechanism for how local transportation excise taxes may be adopted and implemented. Proper deference to this Court's counterpart branches therefore requires that the *statutes passed by the legislature* be presumed valid and enforced—which militates in favor of Taxpayers, not the County.

IV. This is not an "election challenge."

A. Taxpayers challenge the substance of the adopted law, not the procedures of its adoption.

Likewise, *amici* misrepresent this case as an "election challenge." Am. Br. at 11. This case is not an election challenge because it does not contend that voters were misled, or that the procedures by which it was placed on the ballot were improperly followed. On the contrary, it is the *County* that takes that position, and the Taxpayers who *oppose* it.

The Authorizing Resolution asked the Board of Supervisors to place a *retail-sales only* tax on the ballot. APP004. The Board did this—despite the fact that it was warned in September 2017 that such a tax would be illegal. *See* IR.43 at ¶8. On November 7, 2017, the voters approved the retail-only tax. On December 20, 2017, the Taxpayers filed this lawsuit. Two months later, on February 22, 2018, the Board adopted a resolution (Resolution 2018-1) that asserted that the tax was not limited to retail sales after all, but actually applied to all TPT classifications. Taxpayers pressed their case, arguing to the Tax Court that the tax (on retail sales) adopted by the voters was invalid, and that the County's effort to retroactively assert that the tax was a TPT tax and not a retail-only tax, was also invalid.

That is simply not an "election challenge." An election challenge involves a dispute over "the manner in which an election is held." *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987). The Taxpayers do not present such a dispute, and they

never have. On the contrary, they have maintained from the beginning that the Proposition 417 tax applies only to retail sales, and that this is unlawful as a matter of *substantive* law.

This case is therefore like *Tilson*, in that it involves a challenge to the substantive legality of the measure the voters adopted—which the *Tilson* Court said was appropriately brought after, not before, an election. The plaintiffs in that case challenged the validity of a proposed initiative that would have limited the amount of damages available in lawsuits. The plaintiffs sought a court order preventing that initiative from appearing on the ballot, arguing a *procedural* irregularity. (Specifically, it violated the single-subject rule. *Id.* at 471.)

In explaining why it had jurisdiction, this Court differentiated between lawsuits that challenge "the legality of the *substance* of [a ballot] initiative," *id.* (emphasis added), and those that challenge "the *procedures* leading up to an election." *Id.* at 470 (emphasis added). Procedural challenges are those that contend there is some defect in "the manner in which an election is held." *Id.* These are "election challenges," and they must be brought before the election. But the opposite is true for lawsuits challenging the substantive legality of an initiative; those sorts of cases must wait until after the voters approve the measure. *See id.* ("courts are powerless to predetermine … the validity of the substance of an

initiated measure."); *accord*, *Molera v. Hobbs*, No. CV-20-0213-AP/EL, 2020 WL 6266451, at *6 ¶25 (Ariz. Oct. 26, 2020).

Taxpayers here do not argue any procedural irregularity. They do not claim that "the prescribed procedure" for holding a local initiative election "[was] not … followed." *Tilson*, 153 Ariz. at 470 (citation omitted). On the contrary, they argue that the *substance* of Proposition 417 is invalid. It is invalid both because it imposes a retail-only sales tax and because it contains an illegal $10,000 carve-out. The Taxpayers therefore not only sued at the right time, but they could *not* have sued earlier. Because they challenge "the legality of the substance of an initiative," they had to wait "until the initiative [was] adopted." *Id.* at 471.

B. The Authorizing Resolutions is a law, and even if it were not, that would not change matters.

The reason the *amici* are confused about this is because the County has tried to persuade this Court that the tax that appeared on the ballot as Proposition 417 was different from the tax proposed in the Authorizing Resolution. In other words, *it is the County, not the Taxpayers*, who say there is a "surprise switcheroo" at issue in this case. Am. Br. at 11. The Taxpayers contend that no switch took place, and that this Court should not allow such a switch to take place.

The Taxpayers' position is that the tax in the Authorizing Resolution and the tax in Proposition 417 are *identical*—that is, they are the same *retail-only* tax. They then argue that this is unlawful under Sections 48-5314 and 42-6106. In

contrast, the County's argument logically depends on the premise that the Board (successfully) switched the tax from the retail-only tax contemplated by the Authorizing Resolution to a tax on all TPT classifications. It claims that it accomplished this transformation by adding the word "including" to the text of Proposition 417. The Taxpayers *deny* that contention. They contend that there has been *no* such "switcheroo," and that the County's effort to implement such a thing should not be countenanced by this Court. *See* Taxpayers' Supplemental Brief at 12-20. Hence, the *amici*'s effort to portray the Taxpayers' position as inconsistent is meritless.

Relatedly, the *amici* assert that the Authorizing Resolution "was not a legislative act," Am. Br. at 14, which, they say, distinguishes this case from *Braden v. Yuma Cnty. Bd. of Supervisors*, 161 Ariz. 199 (App. 1989), and *Henningson, Durham & Richardson v. Prochnow*, 13 Ariz. App. 411 (1970). Because (they say) the Authorizing Resolution was not a legislative act, this Court can disregard its wording, as the Court of Appeals did.

But the premise is not true. The Authorizing Resolution *was* a legislative act, and the Court of Appeals committed reversible error by giving effect to *some* words in the Authorizing Resolution (those vesting the Board with authority to hold the election) while ignoring *other* parts of that text (those specifying a retail-only tax).

Legislation is any enactment that "declares a public purpose and provides for the ways and means of its accomplishment," *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 489 (1991), or that adopts "a 'definite, specific act or resolution,'" as opposed to a general statement of goals. *Fritz v. City of Kingman*, 191 Ariz. 432, 434 ¶11 (1998) (citation omitted). "[S]ubstantive acts pertaining to subject matter over which the legislative body has authority to regulate constitute legislation," *Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna*, 238 Ariz. 296, 300 ¶15 (App. 2015), whereas merely expressing abstract support for an idea and urging others to do the same, does not. *Id.* at 301 ¶17.

The Authorizing Resolution at issue here is legislation under any of these definitions.[7] It declared a public purpose (adopting the plan and tax), and it provided the means of accomplishing this (directing the Board to place the tax and

[7] Even if the Authorizing Resolution were not technically law, however, that would make no difference. The rules of interpretation on which Taxpayers rely here apply equally to *all* writings. As noted in Taxpayers' Supplemental Brief (at 7), the rule against surplusage applies not only to statutes, *Bilke v. State*, 206 Ariz. 462, 464 ¶11 (2003), and county resolutions, *Schilling v. Tempert*, No. 1 CA-CV 12-0505 EL, 2012 WL 4893221, at *3 ¶ 15 (Ariz. App. Oct. 16, 2012), but also to private legal documents such as contracts, *Chandler Med. Bldg. Partners v. Chandler Dental Grp.*, 175 Ariz. 273, 277 (App. 1993), leases, *Pepsi-Cola Metro. Bottling Co. v. Romley*, 118 Ariz. 565, 570 (App. 1978), trusts, *In re Estate of Porini*, No. 1 CA-CV 11-0766, 2012 WL 5928275, at *1 ¶8 (Ariz. App. Nov. 27, 2012), wills, *Pass v. Stephens*, 22 Ariz. 461, 466 (1921), and deeds. *Id.* The rule that "every word must have some meaning" in a time-honored principle that applies to *all* writings. *See* Johann August Ernesti, *Elementary Principles of Interpretation* 19 §14 (1838).

plan on the ballot). It was a substantive act[8] pertaining to the subject matter over which the RTA has statutory authority, and not just an abstract statement of support. It was the specific type of resolution that the RTA is statutorily authorized to enact. A.R.S. § 48-5314(A)(2). Consequently, the Court of Appeals was bound either to give effect to all of its wording—meaning that the Authorizing Resolution only permitted the Board to ask voters to approve a retail-only tax—or to declare that the Authorizing Resolution was void *ab initio*, and consequently that Proposition 417 is legally invalid. Either way, the County must be in error when it contends that the Board managed to switch Proposition 417 from an unlawful retail tax into a lawful TPT tax.

The Authorizing Resolution was subject to the canon against surplusage. *Moore v. Valley Garden Ctr.*, 66 Ariz. 209, 211 (1947) ("[I]t is a well settled law of construction of constitutions, statutes, charters, and similar instruments that the courts must, if consonant with reason, interpret such instruments in a manner such as will give effect to each and every provision thereof."). The Court of Appeals committed reversible error by disregarding this canon.

[8] Specifically, it was an enabling act—i.e., a *jurisdictional document*—that gave the Board authority to place a tax on the ballot. The Board has no such authority absent a valid Authorizing Resolution. A.R.S. § 48-5314(A)(2). By contrast, the Board of Supervisors of a county with 1.5 million or more residents does have such authority. *See* A.R.S. § 42-6103(A).

To reiterate: it is the County, not the Taxpayers, that implicitly argues that there was a procedural irregularity in the election. It says the Authorizing Resolution contained defects which were cured by the addition of the word "including," and that voters who thought Proposition 417 would only levy a tax "upon every person engaging or continuing in the business of selling tangible personal property at retail" (APP.004) were confused. The Taxpayers, by contrast, hold that there was *no* procedural defect, and the voters were *not* confused. The Authorizing Resolution proposed a retail-only tax, and Proposition 417 proposed the same retail-only tax, and the voters approved that retail-only tax. However, as a matter of law, a retail-only tax is invalid. Because Taxpayers address only "the validity of [Proposition 417]'s substance," this case was timely brought. *Tilson*, 153 Ariz. at 470.

CONCLUSION

The decision of the Court of Appeals should be *reversed*, and judgment should be entered for the Taxpayers.

Respectfully submitted this 5th day of November 2020 by:

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