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

PETITION FOR REVIEW OF OPINION OF COURT OF APPEALS

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ISSUES PRESENTED FOR REVIEW

1. Do A.R.S. §§ 42-6106 and 48-5314 permit a county to adopt a retail sales tax with a carve-out whereby the first $10,000 of any single item is taxed at one rate, while any amount in excess of that is not taxed?

2. The Regional Transportation Authority (RTA) adopted an Authorizing Resolution pursuant to A.R.S. § 48-5314(A)(2) calling for a retail-only sales tax. After voters approved that, the County Board of Supervisors adopted a Resolution instructing the Arizona Department of Revenue (ADOR) to collect the tax *not* on retail sales alone, but on all seventeen transaction privilege tax (TPT) classifications. Is this lawful?

INTRODUCTION

The decision below empowers all 15 counties to design taxes of varying rates and styles, in defiance of the plain text of A.R.S. § 42-6106, and creating a patchwork of taxes throughout the state that destroys the consistency that is basic Arizona tax law policy.

That's why this is the rare case in which taxpayers and ADOR agree: what Pinal County did is illegal.

A.R.S. §§ 42-6106 and 48-5314 specify how transportation excise taxes are adopted.

A county's RTA begins the process by adopting an Authorizing Resolution to propose a tax, which the Board of Supervisors must then place on the ballot for voter approval. A.R.S. § 48-5314(A)(2). The Supervisors have no power to transform the tax an RTA proposes in the Authorizing Resolution into an different tax before placing it on the ballot, which is what the County claims it did here.

Second, the tax must be imposed at a single rate for all seventeen TPT classifications. A.R.S. § 42-6106(B)(1). Counties may not adopt retail-only sales taxes, as the County did here. Nor may they design a tax to include a carve-out whereby the first $10,000 of a transaction is taxed, but amounts above that are not—as the County did here.

The court below held that the County's actions were lawful, however: that the RTA proposed one kind of tax, and the Supervisors lawfully transformed it into another tax before putting it on the ballot. It also held that counties may include carve-outs that tax different retail transactions at different rates.

That decision is contrary to law, public policy, and the interests of taxpayers and the state.

FACTS AND PROCEDURAL HISTORY

The RTA adopted an Authorizing Resolution (Resolution 2017-1) that called for a tax on *retail sales only*. The Resolution also specified that the tax would apply differently to sales of items costing more than $10,000 than items costing

less than that. Specifically, items costing below $10,000 would be taxed at a half-percent, while for items costing more, the first $10,000 would be taxed at half a percent, and not taxed at all above that threshold.

When the Supervisors received the Authorizing Resolution, however, they changed its wording before putting it on the ballot. The Resolution said the tax would be

> "a transportation excise tax at a rate equal to one-half percent (0.005% [*sic*]) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail."

APP.004. The Supervisors instead put on the ballot:

> "a transportation excise (sales) tax ***including*** at a rate equal to one-half percent (0.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail."

APP.024 (emphasis added). This was Proposition 417, which voters approved at the November 7, 2017 election. Taxpayers filed suit against the County and ADOR on December 20, arguing that a retail-only tax and a $10,000 carve-out both violate Section 42-6106. They also sought declaratory relief to determine what exactly *is* subject to the tax, because if it applies only to retail sales, then the Restaurant Association Plaintiffs would not be subject to the tax, whereas if it applies to all TPT classifications, they would be. So would the mining industry,

utilities, telecommunications, railroads, airlines, pipelines, hotels, home building, golf courses, printing, etc.

On February 22, 2018—two months later—the Supervisors adopted Resolution 2018-1, which asserted that the tax was *not* limited to retail sales after all, but applied to all TPT classifications. APP.027. (Taxpayers maintain that this is incorrect; the proper interpretation of Prop. 417 is that it imposes the same retail-only tax described in the Authorizing Resolution. *See* Section I.B below.) Resolution 2018-1 also asserted that the $10,000 carve-out is a "variable" or "modified" rate permitted by Section 42-6106(C).

Taxpayers sought preliminary injunctive relief, which the County and ADOR opposed, and the Tax Court denied. APP.029–30. Taxpayers then sought declaratory judgment, which the Tax Court granted. It held that the Authorizing Resolution only called for a tax on retail sales, and that the Supervisors had no authority to transform it into a TPT tax. APP.31–33. (This rendered moot the question of whether the Supervisors did, in fact, accomplish such a thing by adding the word "including.") It concluded that Prop. 417 imposed a tax only on retail sales, and because that is illegal, the Taxpayers were entitled to relief. *Id.* It

denied the Taxpayers attorney fees, however, on the ground that neither the County nor ADOR acted in a "socially evil" manner.[1] APP.036.

THE DECISION BELOW

The Court of Appeals reversed. It held that although the Authorizing Resolution called only for a tax on retail sales, that had no legal consequences. Op. at 6–8 ¶¶8–12. Taxpayers had argued that the Resolution's language must be given legal effect, and while Section 42-6106 does not require an RTA to specify the details of a proposed tax, if the RTA does include such specifics in a Resolution, they must be binding. But the court held that a Resolution's wording is irrelevant, because Section 42-6106 only requires an RTA to adopt a resolution calling for adoption of a tax; so even if it does specify such details, those specifics are void. *Id.* at 10 ¶19. This meant the Supervisors could disregard the fact that the Resolution called solely for a retail sales tax, and substitute instead a tax on all TPT classifications.

Secondly, it held that the Supervisors in fact did that: the change in wording between the Authorizing Resolution and Proposition 417—i.e., the addition of the

[1] Pursuant to Rule 21(a), Taxpayers will seek fees pursuant to the Private Attorney General Doctrine and Section 12-348. This Court should hold—for reasons given in Taxpayers' briefs below—that Taxpayers are entitled to fees against all Defendants without regard to whether Defendants' actions were "socially evil." Alternatively, it should grant review on the question of whether that is a proper consideration under the Private Attorney General Doctrine.

word "including"—transformed the tax from a retail sales tax into a tax on all TPT classifications. *Id.* at 8–11 ¶¶13-22.

Proposition 417 asked voters to approve "a transportation excise (sales) tax including at a rate equal to one-half percent (0.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail," (APP.024) and Taxpayers argued that this wording—both grammatically and employing proper legal construction—referred to the same retail-only tax that the Authorizing Resolution specified. The most natural reading of Prop. 417 was that it contemplated *a retail-only tax that included a $10,000 carve-out*.

The Court of Appeals, however, rejected "strict rules of technical grammar," and chose instead to "read the question [in Prop. 417] as: 'Do you favor the levy of a transportation privilege [*sic*[2]] (sales) tax...in Pinal County?'" Op. at 9 ¶17. In other words, it read Prop. 417 as contemplating *a transaction privilege tax that included a retail sales tax that included the $10,000 carve-out.* In other words, by adding the word "including," the Supervisors successfully transformed the tax from the (unlawful) retail-only tax specified in the Authorizing Resolution into a (lawful) tax on all TPT classifications.

[2] The actual wording was "a transportation excise (sales) tax."

Finally, the court held that the $10,000 carve-out was lawful because Section 42-6106 lets counties adopt "variable" or "modified" rates. *Id.* at 11–14 ¶¶ 23-30. Taxpayers and ADOR argued that this means counties can impose a *single* variable rate, applicable to *all* TPT classifications, which varies with time—not that they can establish different rates *within* classifications. Taxpayers and ADOR argued that the $10,000 carve-out violates Section 42-6106's plain wording, which refers to "*a* rate" in the singular, and says "*the* tax *shall* be levied and collected," whereas a zero rate—which the County levies on items above the $10,000 threshold—isn't a rate at all, and isn't levied or collected. The court, however, opted for "a broad construction" of the statute whereby counties may adopt "almost any type of change" they choose. *Id.* at 12 ¶¶ 25-26. It found that zero is a rate because the legislature adopted a zero rate for commercial lease businesses in Section 42-5010(A)(4), and that the statute did not expressly bar counties from adopting multiple rates.

REASONS FOR GRANTING THE PETITION

This case presents two questions of first impression: 1) whether an Authorizing Resolution has binding legal effect; and 2) whether Section 42-6106 lets counties essentially establish new tax classifications by imposing different rates *within* statutory TPT classifications, such as separate rates on different dollar amounts of transactions.

These questions are important not just to Taxpayers, but to the state. The decision below disregards longstanding precedent requiring the strict construction of tax statutes, and gives all 15 counties power to fashion transportation excise taxes however they see fit, without regard to the policy of uniformity that animates state tax law. The result will be a crazy quilt of taxes, which hinders economic growth and interferes with state authority over tax policy. For example, there is no reason, under the decision below, why a county could not adopt a zero rate on revenue from car sales, thus creating an exemption not found in state law—or exempt the first $10,000 per item, and tax only amounts *over* that, again creating a new exemption. This contradicts the plain language of Sections 42-6106 and 48-5314, longstanding rules of legal construction, and sound public policy. This Court should grant the Petition and reverse.

I. The Court should clarify that an Authorizing Resolution has legal effect and that counties may not substitute a different tax before putting it on the ballot.

A. Under Section 48-5314, Authorizing Resolutions are legally significant documents which neither counties nor courts may ignore.

All sides now appear to agree that Section 42-6106 does not let counties impose transportation excise taxes exclusively on retail sales. Instead, such taxes must be levied on all seventeen TPT classifications. But the Authorizing

Resolution violated that rule. It said the tax would apply solely to retail sales. The first question, therefore, is whether that matters.

The Tax Court said it did, because Section 48-5314 requires the RTA to adopt an Authorizing Resolution, and then requires the Supervisors to place "the" question from that Resolution on the ballot. The Supervisors may not place a *different* question on the ballot. APP.032.

The court based that holding on the principle that the Supervisors may not refer questions to the voters that have not been adopted by the RTA. *Id.* (citing *Respect Promise in Opp'n to R-14-02 v. Hanna*, 238 Ariz. 296, 299–300 ¶12 (App. 2015)).

That holding is also supported by the rule that counties have only those powers granted them by statute. *Associated Dairy Prod. Co. v. Page*, 68 Ariz. 393, 395 (1949); *Ponderosa Fire Dist. v. Coconino Cnty*., 235 Ariz. 597, 602–3 ¶25 (App. 2014). No law gives the Supervisors authority to change a tax from that contemplated in an Authorizing Resolution into another tax before putting it on the ballot.

That conclusion is also consistent with the language of Section 48-5314, which specifies the process for adopting these kinds of taxes. It says after an RTA enacts an Authorizing Resolution, the Supervisors must provide voters with "*the rate* of *the* transportation excise tax, the number of years *the* tax will be in effect,"

etc. A.R.S. §48-5314(C)(3) (emphasis added). This use of the word "the" instead of "*a*" makes clear[3] that the Supervisors may not respond to an Authorizing Resolution by putting *whatever tax they choose* on the ballot. Instead, they must place *the* tax called for in the Resolution on the ballot.

The court below, however, held that an Authorizing Resolution's text has no legal significance. Because the RTA was not required to specify the terms of a tax in the Resolution, the Supervisors could disregard the fact that it did so, and put a different tax on the ballot than what was called for in the Resolution. And because the Resolution is not "distributed to the voters, or otherwise publicized," there was no reason to hold the Supervisors to the terms of that Resolution. Op. at 7 ¶12.

That conclusion contradicts fundamental principles of Arizona law.

First, it is contrary to public policy. "Taxing officials," this Court has said, may not "establish traps for taxpayers." *State v. Tex. Indep. Oil Co*., 95 Ariz. 216, 220 (1964). But letting the Supervisors to reword the terms of the Authorizing Resolution so as to change it into a TPT tax before putting it on the ballot allows just that.

[3] "[I]t would be extending liberality to an unwarrantable length to confound the articles 'a' and 'the.' The most unlettered persons understand that 'a' is indefinite, but 'the' refers to a certain object." *Chavis Van & Storage v. United Van Line*, 784 F.3d 1183, 1192 (8th Cir. 2015) (Citation and quotation marks omitted)).

Second, an Authorizing Resolution should be interpreted "so as to give effect to every word and part, if possible." *Paxton v. McDonald*, 72 Ariz. 378, 382 (1951). The decision below ignores this rule and selectively renders the Resolution's text surplusage. It holds that the Resolution is *not* void *ab initio* (and that it *did* trigger the Section 48-5314 process)—but that the *rest* of its language can be ignored. That interpretation violates the rule against surplusage.

The scope of the Court of Appeals' error is indicated by an exchange during oral argument, when the court asked the County's counsel: suppose the Resolution proposed an income tax, which is plainly illegal; could the Supervisors ignore that and put a transportation excise tax on the ballot instead? The County's answer was yes: "I think if the County understood that what they were really asking was for a [transportation excise] tax."[4]

But—and third—that loose, "good enough for government work" approach is contrary to the law. Statutory procedures for the adoption of taxes must be strictly followed. *Braden v. Yuma Cnty. Bd. of Supervisors*, 161 Ariz. 199, 202-03 (App. 1989); *State Tax Comm'n v. Miami Copper*, 74 Ariz. 234, 243 (1952); *Corp. Comm'n v. Equitable Life Assur. Soc'y,* 73 Ariz. 171, 178 (1951). Neither the Supervisors nor the courts can ignore the language the RTA used on the theory that we all know what it *really* meant. *See also Murillo v. Fleetwood Enters.*, 17 Cal.

[4] https://www.youtube.com/watch?v=v7CR06uDDTc at 45:19.

4th 985, 993 (1998) ("We could not … ignore the actual words of the statute in an attempt to vindicate our perception of the Legislature's purpose…. This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed." (citations omitted)).

The decision below held that because "nothing in the statutory scheme…suggests the [Authorizing R]esolution was required to or intended to provide the public with notice of the details of the proposed tax," there was no harm in the Supervisors ignoring its words. Op. at 7 ¶11. But this is not just a question of what voters understood—something courts are poorly situated to determine.[5] Instead, this is a question of what the Supervisors have *authority* to do. Since they have no power not given by statute, they may not disregard an Authorizing Resolution's wording. And since they have no authority to seek referendum-style approval by voters of something that has not been adopted,

[5] In fact, the Resolution was widely publicized, and formed the basis for the public's understanding that the tax would be limited to retail sales. *See, e.g.*, Kelly Fisher, *Pinal Road Excise Tax on Ballot in November*, Casa Grande Dispatch, June 22, 2017, https://www.pinalcentral.com/casa_grande_dispatch/area_news/pinal-road-excise-tax-on-ballot-in-november/article_b6e5b4f6-9d3c-5dcb-a66e-cd3aabc560af.html (describing proposal as a retail-only tax); Mark Cowling, *RTA to Jump-Start Future of North-South Pinal Freeway*, Coolidge Examiner, Nov. 13, 2017, https://www.pinalcentral.com/coolidge_examiner/news/rta-to-jump-start-future-north-south-pinal-freeway/article_178ca7ba-26e1-5e2e-bdcd-ca66dd06c4aa.html (same). After all, the Supervisors only added the word "including," which would not indicate to voters that the tax had been transformed into a tax on all seventeen TPT classifications—everything from mines to golf courses.

Hanna, 238 Ariz. at 299–300 ¶ 12, they may not place on the ballot anything other than what the RTA asked for.

The Supervisors' *only* statutory power is, upon "receiving a certified copy of the [Authorizing R]esolution," to "place *the* issue on the ballot." A.R.S. § 48-5314(A)(2) (emphasis added)—not to place some *other* issue on the ballot.

That said, the conclusion that the Supervisors lawfully transformed the tax from a retail-only tax into a TPT tax presumes that their addition of the word "including" actually accomplished this. It did not, as explained below.

B. The County's addition of the word "including" did not change the retail-only tax into a tax on all TPT classifications.

The County's entire case turns on the word "including," which the Supervisors inserted in Proposition 417. The County claims that this added word transformed the tax from an (admittedly illegal) retail-only tax into an allegedly lawful TPT tax. The court below agreed with the County that by adding the word "including," the Supervisors *impliedly* changed it from retail-only into a TPT tax.

Arizona courts have long emphasized that courts may not "gather new objects of taxation by…implication," *Ariz. State Tax Comm'n v. Staggs Realty*, 85 Ariz. 294, 297 (1959), yet the decision below relies *entirely* on drawing this implication from this single word.

That is ungrammatical, contrary to standards of legal construction, and has deleterious consequences.

1. Grammar: Ordinary readers would understand Prop. 417 ("a transportation excise (sales) tax ***including*** at a rate equal to one-half percent (0.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail") as referring to (1) a retail sales tax that (2) included a half-percent rate. The word "including" adds the rate to the other words, which specify the retail-only tax.[6] This is made clearer by inserting brackets and italics: "Do you favor the levy of a transportation excise (sales) tax *[including at a rate equal to one-half percent (0.5%) of the gross income from the business activity]* upon every person engaging or continuing in the business of selling tangible personal property at retail; provided that…[etc.]" This gives the word "upon" its ordinary meaning. Consistent with ordinary English grammar, this asks voters if they favored a tax "upon" retail sales *including the specified rate.*

2. Rules of construction: Arizona courts (a) construe tax laws strictly against the government, *State v. Super. Ct.*, 113 Ariz. 248, 249 (1976); (b) read separate statutes on the same subject in harmony when possible, *Groat v. Equity Am. Ins. Co*., 180 Ariz. 342, 347 (App.1994); (c) decline to read tax laws expansively based on inference, *Corp. Comm'n*, 73 Ariz. at 177, and (d) interpret

[6] The Court of Appeals said Taxpayers' interpretation "renders the phrase 'including at a rate' meaningless." Op. at 9 ¶ 16. On the contrary, Taxpayers' interpretation holds that what is being "included" in Proposition 417 is *the rate*.

tax laws consistently with sound public policy. *Ariz. Dep't of Revenue v. Short*, 192 Ariz. 322, 325 ¶16 (App. 1998). The Taxpayers' interpretation satisfies these requirements. It applies strict construction by refusing to expand the tax beyond retail-only without express language to that effect. It harmonizes Proposition 417 with the Authorizing Resolution. It does not depend on implication from the word "including." And it accords with public policy by not letting counties create new tax exemptions.

The court below, however, held that adding "including" transformed the character of the tax. Expressly rejecting "strict rules of technical grammar," it held that the word "including" modifies the word "tax," not the phrase "at a rate." Op. at 9 ¶17. In other words, it read Prop. 417 as saying, in effect, "Do you favor the levy of a transportation excise (sales) tax ***on all TPT classifications***, ***provided that it will be*** at a rate equal to one-half percent (0.5%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail…[etc]."

That reading is not natural and not normal. It makes the word "including" mean "in addition to," which is not what "including" means, and it renders the word "upon" illogical, because it now modifies "business activity" (that is, that *business activity is upon every person*, which makes no sense).

This reading also disregards interpretive canons. It is a liberal, not strict, construction, and it "gather[s] new objects of taxation by strained construction or implication." *Staggs Realty*, 85 Ariz. at 297. It ignores the Authorizing Resolution, instead of harmonizing it with Prop. 417. And it gives counties authority not granted them by statute, contrary to sound public policy.[7]

II. Upholding the $10,000 carve-out means allowing all 15 counties to essentially fashion new tax classifications, resulting in confusing and conflicting local taxation.

In upholding the $10,000 carve-out, the court below essentially authorized counties to fashion transportation excise taxes at will, on the theory that almost any configuration qualifies as a "variable" or "modified" rate. This establishes a precedent contrary to sound public policy.

As ADOR has emphasized, consistency is crucial to the sound administration of taxes. Letting counties create different rates—to, in essence, create their own tax classifications—is contrary to the statute's plain language, bad for the economy, and harmful to ADOR, which must administer taxes.

[7] Taxpayers have always argued that Prop. 417 contemplates the same tax described in the Authorizing Resolution. They've never claimed that the voters were confused. On the contrary, the voters knew they were passing a retail-only tax. That is why this case involves no "election law issues," as ADOR claims. ADOR Pet. at 10 n.2. This case is about the validity of what voters knowingly approved: Prop. 417's retail-only tax.

Section 42-6106 uses singular, not plural, language. It says "***the*** tax *shall* be levied and collected at ***a*** rate" (emphases added). But the $10,000 carve-out effectively creates two different rates within the retail sales classification: 0.5% on amounts below $10,000 and a zero "rate" above that. But this places the County in a dilemma. Either zero is not a rate at all—because it is not levied or collected—which is contrary to Section 42-6106's "shall" language, or, if zero *is* a rate, then the County is imposing two different rates, which contradicts Section 42-6106's single, not plural, language.

The court below held that it was lawful for the County to impose a 0.5% rate below $10,000 and zero above that, because Section 42-6106 lets counties adopt a "modified" rate. To Taxpayers' and ADOR's argument that Section 42-6106 contemplates "a" rate rather than multiple rates, it replied that Section 1-214(B) says singular words "include the plural." Op. at 13 ¶27. And it rejected the argument that zero is not a rate because the legislature imposed a "rate" of zero on certain transactions in A.R.S. § 42-5010(A)(4), and if the legislature wished to bar counties from establishing multiple rates within a classification, it would have done so expressly. *Id.* ¶28.

This was legal error with dramatic consequences for Arizona's economy. First, the legislature had no reason to expressly bar counties from adopting multiple rates, because counties only have those powers expressly given them by

statute. *Page*, 68 Ariz. at 395; *Ponderosa Fire Dist.*, 235 Ariz. at 603 ¶25. The legislature had no reason to prohibit counties from doing what it never let them do to begin with.

Second, Section 1-214(B)'s singular/plural rule does not apply where the consequences "would be inconsistent with the manifest intent of the legislature." *See Homebuilders Ass'n v. Scottsdale*, 186 Ariz. 642, 649 (App. 1996). Here, it would be. The fact that the legislature intended counties to impose a *single rate* when adopting transportation excise taxes is plain not only from Section 42-6106's text, but also the other statutes that let counties adopt TPT taxes.[8] Section 42-6111(A), for example, specifies that "county capital projects tax[es]" must be levied "at ***a*** rate that, by ***itself*** … does not exceed ten per cent of the transaction privilege tax rate." (emphasis added). This statute contemplates a single tax rate, not multiple rates.

Where the legislature did anticipate multiple rates, it used the plural, and reserved to *itself* the authority to establish different rates. For instance, Section 42-6112(B), allows a county to adopt a tax "at ***a*** rate" adopted "in the resolution levying ***the*** tax, applied as a percentage of the tax ***rates*** prescribed…by § 42-5010…on each class of business subject to the [TPT] imposed by chapter 5, article

[8] As does the fact that the legislature chose *not* to let counties adopt multiple rates. Op. at 12–13 ¶27 n.4.

1 of this title." This means counties may add a single-rate additional percentage on top of each of the multiple rates that the *state* created. In other words, the state creates different categories, taxes them at different rates—and lets counties add *one* flat number on top of those; counties may not subdivide the categories and impose different rates within those categories.

Of course, the fact that the *state* legislature set a tax on commercial leases in Section 42-5010(A)(4) at zero says nothing about the legality of the zero "rate" adopted by the *County* here. The state has a general taxing power; counties do not.

What, then, does "variable or modified" rate mean? That counties may impose a single rate on all classifications that varies, e.g., with time (1% the first year, 2% the second)—not that counties may subdivide TPT classifications. Allowing counties to do the latter disrupts the consistency and predictability tax law strives for. It would result in what ADOR calls a "hodgepodge" that would "create chaos in tax administration." ADOR's Ct. App. Answering Br. at 24. That would burden these plaintiffs, and hinder economic growth, given that businesses typically seek jurisdictions with predictable, uniform tax rules.

The decision below would make administration of taxes enormously complicated and disrupt the business environment. It would mean, e.g., that Coconino County could subdivide the "restaurant classification," to impose a zero "rate" on vegetarian restaurants and 0.5% on luxury restaurants—while Pima

imposes zero percent on family restaurants and 0.5% percent on restaurants within a mile of the University, or with an annual income of $500,000. This is not what the legislature intended.

CONCLUSION

The petition should be *granted.*

Respectfully submitted this 23rd day of March 2020 by:

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CERTIFICATE OF COMPLIANCE

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Pursuant to Rule 23(g) of the Ariz. R. Civ. App. P. and this Court's March 20, 2020 Order, I certify that the body of the attached Petition for Review appears in proportionally spaced type of 14 points, is double spaced using a Roman font, and contains 4,497 words, excluding the table of contents and table of citations.

Respectfully submitted this 23rd day of March 2020 by:

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The undersigned certifies that on March 23, 2020, she caused the attached Petition for Review of Opinion of Court of Appeals and Appendix to be filed via the Court's Electronic Filing System and electronically served a copy to:

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