IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 08/19/2024
AMY M. WOOD,
CLERK
BY: AMI

WILLIAM JAMES LANE, et al.,	)	Court of Appeals
	)	Division One
Plaintiffs/Appellants,	)	No. 1 CA-CV 24-0545 EL
	)	
v.	)	Maricopa County
	)	Superior Court
CITY OF SCOTTSDALE, et al.,	)	No. CV 2024-015767
	)	
Defendants/Appellees.	)	
	)	

AMENDED[1] ORDER

ACCEPTING SPECIAL ACTION JURISDICTION AND GRANTING RELIEF

The Court, Acting Presiding Judge Anni Hill Foster, Judge Samuel A. Thumma, and Judge Michael S. Catlett participating, has considered and reviewed the putative appeal filed by residents of the City of Scottsdale ("Plaintiffs" or "Residents"), the answering brief, the reply brief, the briefs by amici and oral argument. Sua sponte treating the putative appeal as a special action, this Court accepts special action jurisdiction, and grants relief for the reasons set forth below, with an opinion to follow.

Defendant the City of Scottsdale ("City") voted to refer the following measure to the voters. The text of the measure states:

> **OFFICIAL TITLE: A CITY CODE AMENDMENT TO REPLACE AND REDUCE SCOTTSDALE'S EXPIRING TRANSACTION PRIVILEGE AND USE TAX RATE TO FUND: 1) IMPROVEMENTS AND MAINTENANCE**

[1] Amended language is **bolded** on page 7.

FOR CITYWIDE PARKS AND RECREATIONAL FACILITIES; 2) MAINTENANCE AND PROTECTION FOR THE MCDOWELL SONORAN PRESERVE; AND 3) INCREASED POLICE AND FIRE RESOURCES RELATED TO CITYWIDE PARKS AND THE PRESERVE.

DESCRIPTIVE TITLE: Authorizes the City to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years to fund the improvement, maintenance, and protection of Citywide Parks and Recreational Facilities, and the maintenance and protection of the Preserve as determined by ordinance.

A **"YES"** vote shall have the effect of authorizing the City to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years, effective July 1, 2025, for the purpose of: 1) improvements and maintenance for Citywide Parks and Recreational Facilities; 2) maintenance and protection for the McDowell Sonoran Preserve; and 3) increased Police and Fire resources related to Citywide Parks and the Preserve, with all being more specifically determined by City ordinance.

A **"NO"** vote shall have the effect of denying the City the authority to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years, effective July 1, 2025, for the purpose of: 1) improvements and maintenance for Citywide Parks and Recreational Facilities; 2) maintenance and protection for the McDowell Sonoran Preserve; and 3) increased Police and Fire resources related to Citywide Parks and the Preserve.

The City also approved the following Tagline Text, to be printed on the ballot and precede the Descriptive Title Quoted above:

SHALL SCOTTSDALE'S CURRENT 0.20% TRANSACTION PRIVILEGE AND USE TAX RATE, EXPIRING JUNE 30, 2025, BE REPLACED AND REDUCED TO 0.15% FOR 30 YEARS TO FUND IMPROVEMENTS, MAINTENANCE, AND INCREASED POLICE AND FIRE PROTECTION OF CITYWIDE PARKS, RECREATIONAL FACILITIES, AND THE PRESERVE AS DETERMINED BY CITY ORDINANCE?

In June 2024, Residents sued the City, its officials, and Maricopa County[2] seeking to prevent the proposition from appearing on the ballot. The superior court treated the case as an expedited elections matter and, after full briefing and oral argument but without taking testimony, granted the City's motion to dismiss, denied Residents' request for injunctive relief and dismissed the complaint for failure to state a claim upon which relief could be granted. The superior court concluded the measure complied with A.R.S. § 19-101, as interpreted by *Molera v. Hobbs*, 250 Ariz. 13, 19, ¶9 (2020). More specifically, the superior court concluded the description of the measure as "reducing and replacing" current law was not false or misleading. Residents timely appealed as an expedited elections matter. *See* A.R.S. §§ 19-101, -141(A), and -161(B); ARCAP 10(b).

It is unclear from the statutes cited by the parties (A.R.S. §§ 19-101; -125; -141 and -161) that this court has jurisdiction over this matter as an expedited election challenge. *Quality Educ. & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz. 206, 206-07, ¶ 2 (2013). This Court does, however, have discretion to "treat the matter as a special action and accept jurisdiction" when there is no "equally plain, speedy, and adequate remedy on appeal." *Id.*; Ariz. R.P. Spec. Act. 1(a). In exercising its discretion, this

[2] Maricopa is a nominal, results only defendant in this case.

Court treats the putative appeal as seeking special action relief and exercises special action jurisdiction. *See* A.R.S. § 12-120.21(A)(4); Ariz. R.P. Spec. Act. 1(a).

A superior court's dismissal for failure to state a claim is reviewed de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). Although the parties cite § 19-101 and cases interpreting that statute, Residents' challenge is governed by §19-125. When a city refers a measure to its voters, the descriptive title in the ballot language must "contain a summary of the principal provisions of the measure, not to exceed fifty words" and the "YES" and "NO" language must "state the essential change in law should the measure receive a majority of votes cast in that particular manner." A.R.S. § 19-125(D); *see also* A.R.S. § 19-141(A) (applying chapter governing initiative and referendum (A.R.S. §§ 19-101 to -161) "to the legislation of cities")).

Applying § 19-125(D) and cases construing that statute, ballot language must not be "false nor clearly misleading," and should "reasonably be regarded as an attempt to provide necessary and appropriate information to the voting public." *Quality Educ.*, 231 Ariz. at 209, ¶ 12 (quoting *Ariz. Legislative Council v. Howe*, 192 Ariz. 378, 384, ¶ 22 (1998)). Ballot language must be clear "because it might be the last or only description the electorate

sees before voting on the measure" and therefore must be "free from any misleading tendency." *Id.* at 208, ¶ 10.[3]

Quality Education reviewed a ballot initiative regarding changes to the state sales tax. *Id.* at 206–07, ¶¶ 1, 4. The challenge alleged the descriptive title and summary were false and misleading because they described the measure as a tax increase. *Id.* at 207–08, ¶ 5. The challenger's preferred language described the initiative as "replac[ing] the temporary one cent per dollar sales tax set to expire on June 1, 2013." *Id.* The court disagreed that the description provided by the neutral Secretary of State was false or misleading, stating the description was fairly described as a "new or additional tax increase." *Id.* at 208, ¶ 7. Here, by contrast, the Court is faced with the opposite issue, whether an expiring tax is being "replaced and reduced." Though the term "replace" is not misleading, the proposition does not continue any current tax; it creates a new tax, and one with a new purpose. This new tax would neither reduce the current tax rate

[3] As will be explained in the subsequent opinion, cases applying A.R.S. § 19-125 involving ballot language drafted by the Arizona Secretary of State affords deference to the presumptively neutral Secretary of State. *See Quality Educ.*, 231 Ariz. at 207, ¶ 6 (quoting *Ariz. Legis. Council v. Howe*, 192 Ariz. 378, 384, ¶ 19 (1998)). That situation is distinguishable from the present case, given that the City is the proponent of the ballot initiative and was the ultimate approver of the proposed ballot language. That important distinction, however, is not the dispositive basis for this Court's conclusion that the proposed ballot language is misleading.

(because the tax will remain at 0.2% until it expires), nor reduce the current tax rate *after* its expiration (because it would create a new tax). *See Tobin v. Rea*, 231 Ariz. 189, 194 ¶ 17 (2013) (explaining that an initiative replacing a temporary 1% sales tax expiring May 31, 2013, with a permanent 1% sales tax effective June 1, 2013, "would impose an *additional* one percent tax from that date forward, *to raise the rate to 6.6 percent*.") (emphasis added)." The proposition's description that a "YES" vote would reduce the "transaction privilege and use tax rate" — which in total is 1.75% and made up of multiple different taxes including the 0.20% at issue here — to 0.15% is misleading because a "YES" vote, in fact, would implement a brand-new tax.

In addition, unlike *Quality Education*, the "NO" provision is misleading. Section 19-125(D) requires that the "YES" and "NO" provisions "stat[e] the essential change in the existing law should the measure receive a majority of votes cast in that particular manner." A.R.S. 19-125(D). In *Quality Education*, the "NO" provision the court upheld was plain and simple, stating "A 'no' vote shall have the effect of not increasing the state sales tax." 231 Ariz. at 207, ¶ 4. Here, the "NO" language in both the full text and Tagline text fails to communicate the essential change that a "NO" vote would effectuate. Namely, that the current tax would terminate as scheduled and no longer exist. A "NO" vote does not, somehow, result in a reduction as the language states; a "NO"

vote results in the current tax terminating on June 30, 2025, as currently scheduled. The City's description of the measure fails to properly disclose the proposition's principal provision - that it creates a new tax - and the essential changes effectuated by a "NO" vote, rendering the approved ballot language misleading.

For these reasons, the superior court erred in dismissing Residents' complaint for failure to state a claim upon which relief can be granted and, as a result, erred in denying Residents' request for injunctive relief.

IT IS THEREFORE ORDERED sua sponte treating the putative appeal as a petition seeking special action relief, accepting special action jurisdiction under Arizona Rule of Procedure for Special Action 1(a); and

IT IS FURTHER ORDERED granting relief by reversing the superior court's July 19, 2024, Minute Entry Order and enjoining the City and County from including the measure **as currently worded** on the 2024 ballot.

This Court will issue a formal opinion in due course.

_____/s/_____

Anni Hill Foster, Presiding Judge

A copy of the foregoing
was sent to:

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