

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-009364

05/27/2025

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

HOWARD MECHANIC, et al.

NICHOLAS ANSEL

v.

STATE OF ARIZONA, et al.

HAYLEIGH S CRAWFORD

BRIAN M BERGIN
KARA MARIE KARLSON
JOSHUA G NOMKIN
KATHRYN E BOUGHTON
JOSHUA D BENDOR
RYAN JAMES REGULA
BRETT W JOHNSON
KYLE ROBERT CUMMINGS
ANTHONY ROMAN NAPOLITANO
KORY A LANGHOFER
THOMAS J. BASILE
TIMOTHY SANDEFUR
JONATHAN RICHES
PARKER JACKSON
DANIEL J ADELMAN
KAREN HARTMAN-TELLEZ
JUDGE BLANEY

UNDER ADVISEMENT RULING

The Court has reviewed and considered the following:

1. Plaintiffs' *Motion for Summary Judgment* and associated filings,

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2. Intervenor-Defendant Prescott Frontier Days, Inc.'s *Motion for Summary Judgment* and associated filings,
3. Defendant State of Arizona's *Motion for Judgment on the Pleadings* and associated filings,
4. *Brief of Amicus Curiae Speaker of the Arizona House of Representatives Ben Toma* and associated filings,
5. *Brief Amicus Curiae of Goldwater Institute* and associated filings,
6. The arguments received at the March 3, 2025 oral argument on the above filings.

The Court has further reviewed Nominal Defendant Arizona State Treasurer Kimberly Yee's *Supplemental Response to Court's Oral Argument Questioning* and associated filings. Plaintiffs move to strike the *Supplemental Response* as untimely.

THE COURT FINDS that the Treasurer's filing is untimely and its submission after the close of briefing and after the conclusion of oral argument prejudices other parties, most notably Plaintiffs. These arguments and legal citations should have been asserted while the other parties were briefing their respective motions for summary judgment or while Goldwater Institute and Speaker Toma were filing their respective amicus briefs.

On a failure to show good cause, and in the Court's discretion,

IT IS ORDERED granting Plaintiffs' *Motion to Strike* and striking Nominal Defendant Arizona State Treasurer Kimberly Yee's *Supplemental Response to Court's Oral Argument Questioning*. The Court will not consider the arguments raised therein.

This case involves a challenge to an appropriation in the 2024 general appropriations act that purported to give approximately \$15,000,000.00 to the nonprofit organization that runs the Prescott rodeo. Plaintiffs are residents and taxpayers of Prescott, Arizona. They brought this action for declaratory and injunctive relief to challenge the State of Arizona's appropriation. Plaintiffs argue in Count I that the appropriation violates the "Gift Clause" in the Arizona Constitution (Article IX, Section 7) because it is not supported by any consideration, let alone a promise of sufficient direct benefits that serve a public purpose. More specifically, Plaintiffs argue in Count I that the appropriation contains no instructions or limitations on when or how the appropriated funds must be used.

Plaintiffs argue in Count II of their *Complaint* that the appropriation at issue in this case also violates the Appropriations Clause of the Arizona Constitution, which provides in relevant part that "[t]he general appropriation bill shall embrace nothing but appropriations for the different departments of the state...." Article IV, Part 2, Section 20.

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In June of 2023, during the pendency of this litigation, Defendant State of Arizona and Defendant Kimberly Yee, in her official capacity on behalf of the Arizona State Treasurer's Office, stipulated that they would not distribute all or any portion of the challenged appropriation until the Court reaches a final resolution of the merits of this case. In December of 2023, the Court granted Prescott Frontier Days, Inc.'s ("PFD") *Unopposed Motion to Intervene*. PFD is the nonprofit organization that runs the rodeo in question and to which the appropriation is directed.

Plaintiffs move for summary judgment on their claims. Intervenor-Defendant PFD also moves for summary judgment, arguing that Plaintiffs' claims are not ripe because the Treasurer has yet to initiate a grant process for the appropriation, as the Treasurer has done for other appropriations. More specifically, PFD argues that this action is unripe because the Treasurer has not yet published a request for information ("RFI") and no responses thereto have been submitted that would show proper public use and supporting consideration. PFD therefore argues that the operative focus of the Gift Clause in this case is not on the appropriation itself (as Plaintiffs argue) but on subsequent negotiations and a resulting grant that will happen at the direction of the Treasurer in the future. And finally, Defendant State of Arizona moves for judgment on the pleadings on Count II of Plaintiffs' *Complaint* – the claim that the appropriation violates the Appropriations Clause of the Arizona Constitution.

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure*; *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986)). But the Court will not deny a motion for summary judgment on the speculation "that some slight doubt ..., some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Orme School*, 166 Ariz. at 311.

When a plaintiff moves for summary judgment, the question before the Court is not whether the defendant has succeeded in presenting genuine disputes of material fact. Rather, the question is whether the plaintiff has "presented sufficient undisputed admissible evidence to establish its entitlement to judgment." *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213, (App. 2012). The plaintiff carries the burden of persuasion on its motion for summary judgment if they submit "undisputed admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim." *Id.* (quoting *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293 (App. 2010)).

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The parties agree that there are no genuine issues of material fact before the Court that would preclude summary judgment, and this case may be decided as a matter of law by the Court. Because the Court finds that this dispute can be resolved through application of the Gift Clause, the Court's analysis will focus solely on the Gift Clause arguments. The Court declines to address the additional arguments raised by the parties or by amici as either moot or unpersuasive, including whether the appropriation violates the Appropriations Clause.

THE COURT FINDS AS FOLLOWS:

1. On May 10, 2023, the Legislature passed the fiscal year 2024 general appropriations act (the "general appropriations bill").
2. The general appropriations bill includes the following appropriation: "The following amounts are appropriated from the state general fund . . . to the state treasurer for the following: . . . 2. \$15,300,000 to distribute to a nonprofit volunteer organization that operates a rodeo at the Yavapai county fairgrounds."
3. As discussed in detail on page 8 of this ruling, the intended recipient of the \$15,300,000 appropriation was Defendant Prescott Frontier Days ("PFD"), which is a 501(c)(4) nonprofit corporation.
4. PFD operates a rodeo at the Yavapai county fairgrounds called the "World's Oldest Rodeo." PFD leases the land on which the rodeo grounds are located from the City of Prescott. The Lease between Prescott and PFD contains recitals denoting the "World's Oldest Rodeo" as "the Rodeo" and identifies only PFD as the entity that operates "the Rodeo."
5. With approval of the City of Prescott, PFD regularly subleases all or part of the Fairgrounds to other organizations for their use, including to some who sublease on a recurring basis.
6. Among these are the Yavapai County Fair, the Arizona Junior Rodeo Association, and the Arizona High School Rodeo Association.
7. The Arizona Junior Rodeo Association holds its final competition at the Fairgrounds with the permission of PFD and pursuant to their sublease from PFD.
8. The Arizona High School Rodeo Association holds its final competition at the Fairgrounds with the permission of PFD and pursuant to their sublease from PFD.

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9. The \$15.3 million appropriation (the “Rodeo Appropriation”) does not include any conditions or explanation about how the money must be spent by the receiving nonprofit organization.
10. The Rodeo Appropriation does not require that any of the \$15.3 million be spent by the receiving nonprofit organization on buildings or capital improvements.
11. The Rodeo Appropriation does not include any parameters regarding when the money must be spent by the receiving nonprofit organization, or that it be spent at all.
12. The Rodeo Appropriation does not provide any contingencies by, for example, making the Rodeo Appropriation contingent on receiving matching funds.
13. The Rodeo Appropriation does not include any condition that permitting or zoning changes be approved.
14. There are no conditions stated in footnotes to the general appropriations bill that define how the Rodeo Appropriation must be spent by the receiving nonprofit organization.
15. Because general appropriations bills may not include substantive legislation, the legislature utilizes budget reconciliation bills to provide any explanation or additions necessary to effectuate the annual budget.
16. In the current legislative session, the legislature enacted numerous budget reconciliation bills. But none of the budget reconciliation bills contained any legislation pertaining to the Rodeo Appropriation.
17. No conditions were placed on the Rodeo Appropriation in either the general appropriations bill or a budget reconciliation bill.

The Court will analyze the Rodeo Appropriation through standard statutory interpretation principles. The Court’s task in statutory construction is to effectuate the text if it is clear and unambiguous. *BSI Holdings, LLC v. Arizona Department of Transportation*, 244 Ariz. 17, 19 ¶ 9 (2018). “If the statute is subject to only one reasonable interpretation, we apply it without further analysis.” *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017) (internal quotations omitted). “If a statute’s language is clear and unambiguous, it is the best indicator of that intent, and we apply it as written without resorting to other methods of statutory interpretation.” *State v. Kemmish*, 244 Ariz. 314, 316, ¶ 10 (App. 2018).

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Plaintiffs, as the party asserting a violation of the Arizona Constitution's Gift Clause, have the burden of establishing the violation. *Schires v. Carlat*, 250 Ariz. 371, 375 ¶ 7 (2021). Arizona courts use a two-prong test to determine whether a public entity's expenditure violates the Gift Clause: (1) the challenged expenditure must serve a public purpose; and (2) the value to be received by the public from the expenditure must not be greatly exceeded by the consideration being paid by the public. *Id.* A failure to satisfy either prong establishes that the challenged expenditure violates the Gift Clause. *Id.*

THE COURT FINDS that Plaintiffs have established that the Rodeo Appropriation violates the Arizona Constitution's Gift Clause. Indeed, although an expenditure need only fail one prong of the Gift Clause test to constitute a Gift Clause violation, the Rodeo Appropriation fails both prongs.

First, the Rodeo Appropriation as written does not serve a public purpose. "In general ... a public purpose promotes the public welfare or enjoyment." *Schires*, 250 Ariz. at 375, ¶8. This Court can consider both direct and indirect benefits of an expenditure in determining public purpose. *Id.* Although the judiciary will often defer to elected officials' determination of "public purpose," *Id.* at 375, ¶ 9, the Court notes that there are no determinations in the text of the Rodeo Appropriation to which this Court could defer. There are also no standards or guidelines in the Appropriation that direct how the public's \$15.3 million must be spent, or whether it must be spent at all on, for example, upgrades to the rodeo grounds. *See* Finding Nos. 2, 10-18. With no stated purpose or limitations on the use of the public's money, the Court cannot find that the Appropriation would serve a public purpose.

Second, the amount of the Rodeo Appropriation far exceeds any value or consideration that the public will receive for the Appropriation. Under the Gift Clause analysis, the consideration received must be "direct benefits" that are "bargained for as part of the party's promised performance." *Schires*, 250 Ariz. at 376, ¶ 14 (citations omitted). "[A]nticipated indirect benefits" constitute insufficient consideration. *Id.* In other words, the "analysis of consideration for Gift Clause purpose focuses . . . on the objective fair market value of what the private party has promised in return for the public entity's payment." *Id.* But here, PFD has not promised anything in return. Again, because the Rodeo Appropriation fails to mandate any specific purpose for the \$15.3 of the public's money that will be paid to PFD, or any limitations on its use, there is no way to determine what value – if any – the public will receive for this expenditure. In fact, the Appropriation fails to require any consideration whatsoever in return for the public's \$15.3 million.

THE COURT FURTHER FINDS that the Rodeo Appropriation did not empower the Treasurer to create a grant program to facilitate distribution of the money. In their filings, Defendants generally argue that the operative transaction for analysis under the Gift Clause is not the Appropriation itself, but a grant process that the Treasurer will subsequently initiate through

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an RFI. Defendants argue that the issues before the Court are not ripe because the determination of “public purpose” and “sufficient consideration” should focus on the Treasurer’s selection of a successful RFI response after completion of the grant process. For the following reasons, Court does not find this argument persuasive.¹

First, the plain language of the Rodeo Appropriation directs the Treasurer to distribute the money to the nonprofit; it does not direct or permit the Treasurer to create a grant program. Nor does the Appropriation contain any standards for the use of the money that the Treasurer would utilize in awarding the money to a particular applicant.

Second, the Treasurer does not have the authority to create a grant program for the Rodeo Appropriation and does not have the authority to attach her own conditions or terms to the distribution of the money. None of the statutes cited by Defendants provide that authority absent a delegation from the legislature. And courts will generally not find a delegation without clear language, evidencing the legislature’s intent to delegate. *See, e.g., Roberts v. State*, 253 Ariz. 259, 268 ¶ 30 (2022) (“[T]he Supreme Court limits the exercise of legislative power by the executive branch on major policy questions to instances where a statute ‘plainly authorizes’ executive agency action.” (citation omitted)); *Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 113 ¶ 59 (App. 2004) (courts “will not infer the grant of authority” from the legislature to the executive branch “beyond the ‘clear letter of the statute.’”) (citation omitted); *Qasimyar v. Maricopa Cnty.*, 250 Ariz. 580, 588 ¶ 26 (App. 2021) (court will not engage in interpretation that “add[s] words to the statute that are not there....”). The Rodeo Appropriation does not contain clear language – or any language – evidencing the legislature’s intent to delegate to the Treasurer the authority to create a grant program, the authority to create her own conditions or terms for the distribution of the money, or the authority to determine which RFI response would satisfy the “public purpose” and “sufficient consideration” analysis of the Gift Clause.

Third, as stated in Finding No. 3, above, it is clear that PFD is the intended recipient of the Rodeo Appropriation and thus a grant process was never intended by the legislature. PFD appears to suggest that the creation of a grant program is implied in the Rodeo Appropriation because the

¹ The parties separately reference, in their filings, past situations in which the Treasurer and/or the Arizona Department of Administration have previously created grant processes to facilitate appropriations. The Court does not find these references to other appropriations or the accompanying arguments to be helpful. None of these other appropriations are at issue before this Court, nor have the parties identified whether the analogous appropriations and their implementing processes were met with legal challenges and, more importantly, that they survived judicial scrutiny. It is entirely possible that the referenced appropriations – if they had been challenged – would have been found unconstitutional in a court of competent jurisdiction. The Court therefore declines to consider these past grant processes for any persuasive value.

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money is not necessarily meant for PFD. PFD is not specifically identified in the Appropriation. And PFD points out that it is not the only entity that holds a rodeo at the fairgrounds. Thus, PFD's argument – as the Court interprets it – is that the Rodeo Appropriation contemplates that the recipient of the \$15.3 million will be chosen from the different entities holding rodeos at the fairgrounds after the Treasurer initiates a grant process through an RFI and responses are received.

PFD's argument is foreclosed by multiple email communications that Plaintiffs attached to their *Statement of Facts*, all of which show Arizona legislators and PFD representatives working together to craft the Appropriation specifically for PFD. See PSOF at ¶¶ 24-29.² But even if the Court were to disregard the emails, it is undisputed that PFD is the nonprofit organization that actually leases the fairgrounds from the City of Prescott for the "World's Oldest Rodeo," see PFD's *SOF in Opp. to Plaintiff's MSJ* at ¶¶ 1,2. PFD's rodeo is also referred to in PFD's lease of the fairgrounds as "the Rodeo." See PSOF at ¶¶ 15, 17. PFD further concedes that the two other organizations that each hold a rodeo event at the fairgrounds do so merely as sublessees of PFD, with PFD's permission, and pursuant to PFD's lease from the City of Prescott. See PFD's *SOF in Opp. to Plaintiff's MSJ* at ¶¶ 3-7. PFD also confirms that it has the authority to determine whether other entities may utilize the rodeo grounds pursuant to its lease. *Id.* at ¶ 8. Accordingly, no reasonable juror could find that the Rodeo Appropriation's mandate that \$15.3 million be given "to a nonprofit volunteer organization that operates a rodeo at the Yavapai County Fairgrounds" was meant to refer to any other entity than PFD.

THE COURT THEREFORE FINDS that Plaintiffs have presented sufficient undisputed admissible evidence to establish their entitlement to judgment on their Gift Clause claim.

THE COURT FURTHER FINDS that no genuine issues of material fact preclude summary judgment for Plaintiffs on their Gift Clause claim.

On a showing of good cause, and in the Court's discretion,

IT IS ORDERED granting in part Plaintiffs' *Motion for Summary Judgment* and declaring that the Rodeo Appropriation violates the Gift Clause of the Arizona Constitution.

IT IS FURTHER ORDERED enjoining the appropriation of public money through the Rodeo Appropriation to Prescott Frontier Days.

² PFD's hearsay objections to the emails – all of which were produced by the legislature pursuant to a public records request – are overruled. The emails do not appear to have been offered for the truth of any specific assertion made in any particular email, but instead to show that general discussions were occurring between legislators and PFD representatives about an appropriation to PFD. See Rule 801(a)&(c), Ariz.R.Evid.; see also *Declaration of Nichola Ansel* at ¶ 5.

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IT IS FURTHER ORDERED denying Intervenor-Defendant Prescott Frontier Days, Inc.'s *Motion for Summary Judgment*.

IT IS FURTHER ORDERED denying as moot Defendant State of Arizona's *Motion for Judgment on the Pleadings*.

IT IS FURTHER ORDERED declining to address the parties' remaining arguments as either moot or unpersuasive.

IT IS FURTHER ORDERED directing Plaintiffs to prepare and lodge a form of Judgment on or before **June 13, 2025**. Plaintiffs shall file any request for attorney's fees, if appropriate, and/or statement of taxable costs by this deadline as well. Defendants shall file any objections or responses to the form of judgment or to the request for fees or costs within **ten (10) days** thereafter.