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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN THE ARIZONA TAX COURT

HAROLD VANGILDER; DAN NEIDIG; and ARIZONA RESTAURANT ASSOCIATION, Plaintiffs, vs. ARIZONA DEPARTMENT OF REVENUE; PINAL COUNTY; PINAL COUNTY REGIONAL TRANSPORTATION AUTHORITY, Defendants.	NO. TX2017-000663 **DEFENDANTS PINAL COUNTY AND PINAL REGIONAL TRANSPORTATION AUTHORITY'S RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION** (The Honorable Christopher Whitten) (Oral Argument Requested)

Defendants Pinal County (the "County") and Pinal Regional Transportation Authority (the "RTA" and, together with the County, the "Pinal Defendants"), hereby respond in opposition to Plaintiffs' Motion for Preliminary Injunction (the "Motion").

PRELIMINARY STATEMENT

After a widely-publicized and debated Special Election on November 7, 2017, Pinal County voters approved a Regional Transportation Plan (the "Plan") through Proposition 416 to meet the infrastructure needs created by the region's rapid economic growth and development. To pay for the Plan, voters concurrently approved a transportation excise tax through Proposition 417. As presented to the voters, this tax applies to all transaction privilege tax classifications and includes a variable rate for assessments on the sale of tangible personal property at retail. The rates and methods for applying the tax were described in the materials sent to voters before the election. The tax goes into effect on April 1, 2018, and the Pinal Defendants have begun to implement the Plan.

Now, days before its effective date, the Plaintiffs seek to enjoin collection of this voter-approved tax and, consequently, necessary infrastructure improvements, based on apparitional claims of voter confusion during the election and legally untenable arguments regarding Proposition 417's constitutionality. These arguments are not only untimely, but also lack merit and undermine the voters' purpose and intent when enacting Proposition 417. Furthermore, the Plaintiffs cannot point to any irreparable harm they will suffer absent an injunction, as the only injury they assert is financial. For these reasons and those that follow, the Plaintiffs have failed to meet the requirements for obtaining a preliminary injunction, and the Motion should be denied.

BACKGROUND

The RTA is a public, political, tax-levying public improvement and taxing subdivision of the State of Arizona established by the Pinal County Board of Supervisors (the "BOS") in 2015. A.R.S. § 48-5302. The RTA's goals include providing funding for and creating a balanced regional transportation system for the Pinal County residents. To effectuate these goals, the RTA is authorized by statute to formulate a plan for

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infrastructure improvements and to propose a transportation excise tax to fund the required projects. *See generally*, A.R.S. §§ 48-5309, -5314.

The RTA adopted the Plan by resolution on June 5, 2017. *See* RTA Resolution No. 2017-01, attached as Exhibit 1. The Plan sets forth a comprehensive, multi-modal proposal that includes a list of key roadway and transportation projects to be developed over the next twenty years. There are three elements of the Plan: the Roadway Element, the Public Transportation Element and the Local Projects and Administrative Costs Element. The Plan projects range from a 36-mile roadway between Apache Junction and Coolidge to the construction of new public transportation facilities. *Id.* at 9-12.

The RTA also requested that the County schedule an election for the voters to approve the Plan and the levy of a transportation excise tax (the "Tax") to fund the Plan's projects. *See id.* In accordance with A.R.S. § 48-5314, the BOS then called the election and prepared and printed a publicity pamphlet describing Propositions 416 and 417 (the "Pamphlet"). *See* Publicity Pamphlet and Sample Ballot, attached as Exhibit 2. On October 5, 2017, the RTA approved the final election materials, including the Pamphlet and ballot. *See* RTA Resolution No. 2017-01 (dated October 5, 2017), attached as Exhibit 3. The Pamphlet included, *inter alia*, the election date, "a summary of the principal provisions of the issue[s] presented to the voters, including the rate of the transportation excise tax, the number of years the tax will be in effect and the projected annual and cumulative amount of revenues to be raised." A.R.S. § 48-5314(C)(1)-(3). The election was held by mail. A.R.S. § 16-558; *see* Exhibit 4 (copy of the ballot).

The Pamphlet also included a "statement describing the purposes for which the transportation excise tax monies may be spent as provided by law," the form of the ballot, and arguments supporting the ballot measure. *See* A.R.S. § 48-5314(4)-(6). There were 24 arguments submitted in favor of Propositions 416 and 417, and no arguments submitted against the measures. Exhibit 2, at pp. 20-44.

As relevant here, the Pamphlet also explained that the Tax would apply to all classifications described in A.R.S. Title 42, Chapter 5, Article 1. Exhibit 2, at pp. 14-15.

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The Pamphlet further stated that, with respect to sales of tangible personal property at retail, the Tax would be applied using a variable rate "such that when applied in any case when the gross income from the sale of a single item of tangible personal property exceeds $10,000, the 0.5% Transportation Excise Tax rate shall apply to the first $10,000, and above $10,000, the measure of the Transportation Excise Tax shall be a rate of 0.0%." *Id*. The voters approved Propositions 416 and 417 on November 7, 2017, and the canvass was held on November 15, 2017. The deadline to file an election contest expired on November 20, 2017, five days after the canvass. A.R.S. § 16-673(A). The Tax becomes effective on April 1, 2018. A.R.S. § 48-5314(I).

On February 22, 2018, the RTA approved a resolution directing the Arizona Department of Revenue (the "Department") to collect the Tax as approved by the voters. *See* RTA Resolution No. 2018-01, attached as Exhibit 5. That resolution also provided that the Tax collections shall be deposited into an interest-bearing escrow account pending a final resolution of this case and case No. TX2018-000902. *Id.* On February 28, 2018, the BOS approved Resolution No. 022818-RTATET acknowledging and supporting the RTA's February 22 resolution. *See* BOS Resolution No. 022818-RTATET, attached as Exhibit 6.

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LEGAL ARGUMENT

I. PLAINTIFFS CANNOT DEMONSTRATE THE REQUIRED ELEMENTS FOR A PRELIMINARY INJUNCTION.[1]

As the party seeking an injunction, Plaintiffs are required to demonstrate: (1) a strong likelihood of success on the merits; (2) "the possibility of irreparable injury not remediable by damages if the requested relief is not granted"; (3) that the balance of hardships tips in their favor; and (4) that public policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Relative hardship to the parties is the "critical

[1] If the Court issues an injunction to enjoin the collection of the Tax, the Pinal Defendants will invoke Rule 65(c)(1), which requires the Plaintiffs to give security in the amount the Court considers proper to pay the costs and damages sustained by the Pinal Defendants if they are found to have been wrongly enjoined or restrained. This will include the amount of any tax revenue the Plaintiffs are unable to collect to fund the 20 year Transportation Plan approved by the voters until the injunction is dissolved. However, the Pinal RTA has voted to deposit all of the revenue from the Tax in escrow until this case is over thus providing reason alone to deny the Motion.

element" in this analysis. *Id.* The party seeking the injunction must establish either: (a) probable success on the merits and the possibility of irreparable injury; or (b) the presence of serious questions and that "the balance of hardships tips sharply in his favor." *Id.* (internal quotations omitted).[2] Plaintiffs have not met their burden of establishing any of these requirements.

A. Plaintiffs' Substantive Claims Are Not Likely to Succeed on the Merits.

The procedure by which the County and the RTA scheduled the November 7, 2017 Special Election involved a legislative process. This included (1) the adoption of RTA Resolutions 2017-01 (dated June 5, 2017) and an amended and restated 2017-01 (dated October 5, 2017);[3] (2) the BOS's preparation and distribution of the election materials and (3) the voters' approval of Propositions 416 and 417. "When reviewing a legislative enactment, courts exercise the deference that 'we customarily must pay to the duly enacted and carefully considered decision of a coequal and representative branch of our Government.'" *Ariz. Minority Coal. v. Ariz. Indep. Red'g Comm'n*, 220 Ariz. 587, 595 (2009) (quotation omitted). "Courts also operate under the expectation that 'the legislature acts constitutionally' . . . and 'when there is a reasonable, even though debatable, basis for the enactment of a statute, we will uphold the act unless it is clearly unconstitutional.'" *Id.* (quotation omitted). As explained below, the scope of the voter-approved Tax is clear and in accord with the lawful procedures of the RTA and the BOS.

1. Plaintiffs' Claim for Declaratory Relief Based on Alleged "Voter Confusion" is an Untimely Election Challenge and Therefore Fails.

Plaintiffs' claim for declaratory relief is essentially a challenge to the procedure by

[2] The Ninth Circuit standard adopted in *Shoen* was subsequently overturned by the U.S. Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008), where the Supreme Court held that preliminary relief is available *only* where "irreparable injury is *likely* in the absence of an injunction." The Arizona Supreme Court has not yet addressed whether the *Winter* standard should apply in Arizona, so the *Shoen* standard remains binding precedent. The Pinal Defendants, however, reserve the right to argue that Arizona should adopt the *Winter* standard in the event this claim is presented to the Arizona Supreme Court.

[3] The RTA adopted two resolutions numbered 2017-01. This was done so that the RTA could ratify and adopt the description of the Tax included in the Pamphlet and the accompanying resolution from the County.

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which the Special Election was held. By filing their complaint after the completed election, Plaintiffs ask the Court to overturn the will of the people, as expressed in the election. However, any issue involving the election procedure, including the manner in which the measures were described in the Pamphlet and ballot, was required to have been raised prior to the election. *See Sherman v. City of Tempe*, 202 Ariz. 339, 342 (2002) ("[c]hallenges concerning alleged procedural violations of the election process must be brought prior to the actual election"); A.R.S. §§ 19-122(C), (D) and -141; *Mathieu v. Mahoney*, 174 Ariz. 456, 461 (1993) (action to enjoin ballot measure held to be untimely when brought days before ballot printing). Thus, Plaintiffs' claim that the election procedures created "voter confusion" cannot be considered at this point. For this reason alone, Plaintiffs cannot succeed on this claim.[4]

Even assuming the Court could now address the issue of contemporaneous voter confusion, Plaintiffs have failed to show any meaningful discrepancy between the June 5, 2017 resolution and Pamphlet that would void the election or validate their claims. Minor errors in a publicity pamphlet will not invalidate an election unless such a mistake would have the tendency to mislead voters. *Iman v. Bolin*, 98 Ariz. 358, 364-65 (1965); *see also Moore v. City of Page*, 148 Ariz. 151, 164-65 (App. 1986). In *Iman*, the court held that the Secretary of State had substantially complied with the law after omitting the words from the original measure when it was re-printed in the publicity pamphlet. *Id.* at 365-66. The challenger in *Iman* argued the mistake violated A.R.S. § 19-123, which requires the pamphlet to contain "[a] true copy of the title and text of the measure." The court rejected that argument, finding that because the Secretary prepared a correction sheet before the election, he substantially complied with the relevant law. *Id*.

In *Moore*, the court rejected a challenge to a municipal bond election where the publicity pamphlet erroneously represented to voters that the bonds could be issued at thirteen percent instead of nine percent. The court held that the challenger did not "show

[4] Plaintiffs also failed to bring a post-election contest under A.R.S. §§ 16-671 *et* seq. The last date to file a challenge expired after the contest period ended on November 20, 2017. *See* A.R.S. §§ 16-673, -674 (providing that election contest involving county ballot measures must be brought within five days after completion of the canvass).

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by evidence, and cannot show by logic, that those who voted for the bonds at thirteen percent would have voted against them were they to be issued at nine percent." 148 Ariz. at 163. Here, there was no discrepancy that even needed correction. The Pamphlet and ballot, which was drafted by the County and approved by the RTA on October 5, 2017, made clear how the Tax would be collected, including the rates and classifications on which the Tax would be imposed. *See* Section I(A)(2). Moreover, the voters were asked if they favored "the levy of a [sales] tax for regional transportation purposes" in Proposition 417 after approving the Plan in Proposition 416, which informed the voters $641 million in revenue would need to be raised to pay for the Plan.

Accordingly, even if the RTA's June 5, 2017 resolution failed to fully capture the contours of the Tax and such was required by the statutes (which the Pinal Defendants dispute), had a timely challenge been filed, it would have been rejected because the final measure as presented to the voters substantially complied with the laws governing the Special Election and Plaintiffs have failed to show the election result would have differed even if the ballot language had included a more detailed description of the Tax. Thus, Plaintiffs' claim for declaratory relief fails for two reasons. First, it is untimely and prohibited as a matter of law. Second, even if the Court were to reach the merits of this argument, the minor deviations alleged by Plaintiffs are insufficient as a matter of law to overturn the election results. Accordingly, Plaintiffs have failed to demonstrate a likelihood of success on this claim.

2. <u>The Transportation Excise Tax Applies to All Transaction Privilege Tax Classifications and Does Not Create a New Classification.</u>

The Plaintiffs argue that the Tax applies only to sales of tangible personal property at retail and therefore impermissibly creates a new classification. In making this argument, the Plaintiffs insist the "full text" of Proposition 417 and the text of the Pamphlet are inconsistent. Plaintiffs are wrong. The Pamphlet, which was mailed to every household in Pinal County with a registered voter, includes the "full text" of Proposition 417 [pages 18-19] as printed on each ballot, as well as a detailed description of the Transportation Plan

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[pages 5-14] and the scope of the excise tax needed to pay for it [pages 14-15]. *See generally* A.R.S. § 48-5314(C); Exhibit 2. This is the official information presented to the voters informing them about the propositions, including an explanation of the 20-year Plan and the manner in which it was going to be funded. And this is, of course, what the voters passed into law on November 7, 2017. Plaintiffs' assertion of voter confusion is unsubstantiated and devoid of merit.

The "full text" of the measure and ballot question provides:

PROPOSITION 417 (Relating to County Transportation Excise (Sales) Taxes)

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 such rate shall become a variable or modified rate such that when applied in any case when the gross income from the sale of a single item of tangible personal property exceeds ten thousand dollars ($10,000), the one-half percent (0.5%) tax rate shall apply to the first ten thousand dollars ($10,000), and above ten thousand dollars ($10,000), the measure of tax shall be a rate of zero percent (0.0%), in Pinal County for twenty (20) years to provide funding for the transportation elements contained in the Pinal Regional Transportation Plan?

Do you favor the levy of a transaction privilege (sales) tax for regional transportation purposes, *including* at a variable or modified rate, in Pinal County?
YES _____

NO _____

(A "YES" vote has the effect of imposing a transaction privilege (sales) tax in Pinal County, *including* at a variable or modified rate, for twenty (20) years to provide funding for the transportation projects contained in the Regional Transportation Plan.)

(A "NO" vote has the effect of rejecting the transaction privilege (sales) tax for transportation purposes in Pinal County.)

See Exhibit 2, at pp. 18-19 and Exhibit 3 (Emphasis added).

The plain text of Proposition 417 makes clear that the Tax applies to *all* transaction privilege tax classifications as prescribed in A.R.S. § 42-6106(B), and not just retail.[5] The measure asked the voters if they favor a levy of "a transportation excise (sales) tax" to fund the Transportation Plan. The Plan was set forth in Proposition 416, which asked the voters to first approve the Plan and described its principal provisions including the estimated cost

[5] This includes every transaction privilege tax classification specified in A.R.S. §§ 42-5010(A), -5352(A), and -5155 as referenced in A.R.S. § 42-6106(B).

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of $641 million dollars. *See* Exhibit 2, at 17-18.

After asking the voters if they favor the sales tax levy, the language further states that the levy *includes* a variable/modified rate for retail sales. The word "includes" or "including" is defined in A.R.S. § 1-215, as meaning "not limited to and is not a term of exclusion." This definition applies to all statutes and laws of this state. *See* Arizona Legislative Bill Drafting Manual, at § 5.33 (2017-2018); *see also State v. Walker*, 185 Ariz. 228, 242 (App. 1995), *superseded on other grounds as recognized by State v. Ofstedahl*, 208 Ariz. 406 (App. 2004). Thus, the use of the word "including" informed the voters that the tax would apply to *all* sales tax classifications with a variable/modified rate on retail sales as permitted by A.R.S. § 42-6106(C) and described on pages 14-15 of the Pamphlet.

Moreover, the only specific requirement concerning the ballot language with respect to the tax rate is set forth in A.R.S. § 42-6106(C), which requires that any *variable rate* be specified "in the ballot proposition" and approved by the voters. There is no other provision that requires any other aspect of the Tax to be described in the measure itself. To the contrary, the ballot question need only inform voters that a "yes" or "no" vote will indicate the voters' approval or disapproval of "a transaction privilege (sales) tax for regional transportation purposes". A.R.S. § 48-5314(E)(3). This explains why the ballot language references the variable rate on retail sales but leaves the description of the other privilege tax classifications to the Pamphlet, in accordance with A.R.S. § 48-5314(C)(3).

Thus, contrary to the Plaintiffs' allegations, the measure and ballot question did not need to contain a complete recitation of the Tax. There is simply not enough room on the ballot to do so. The same is true of the 20-year Transportation Plan approved by the voters in Proposition 416. This authority is set forth in A.R.S. §§ 42-6106 and 48-5314. That is why the voters are provided with the Pamphlet, which contains these details. All that is required is that the measure provide a summary of the principal provisions, which was the case for Propositions 416 and 417.

To the extent there is any uncertainty as to the interpretation of Proposition 417 (and there is not), the court may look to the Pamphlet for guidance. *See Saban Rent-A Car LLC*

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v. Ariz. Dep't of Revenue, ___ Ariz. ___, ___ n.5, 2018 WL 1279248 at *3 n.5 (Ariz. Ct. App. March 13, 2018). Here, the Pamphlet explains the scope of the Tax and therefore resolves any question regarding what the voters approved. *See generally Ariz. Legislative Council v. Howe*, 192 Ariz. 378, 384 (1998); *Quality Education & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz. 206, 207-08 (2013). When interpreting ballot language, the court must determine whether it "can reasonably be regarded as an attempt to provide necessary and appropriate information to the voting public." *Id*. at 384. A summary of the principal provisions of a measure is legally sufficient so long as it does not mislead or confuse voters. *Kromko v. Superior Court*, 168 Ariz. 51, 59-60 (1991) (an initiative petition title's failure to describe every aspect of a proposed measure does not always creates the degree of fraud, confusion, and unfairness sufficient to invalidate the petition); *Wilhelm v. Brewer*, 219 Ariz. 45, 48 (2008) (omission of reference to a provision in the 100 word summary describing "the principal provisions of the proposed measure" was "not fraudulent and did not create confusion or mislead."); *Hood v. State*, 24 Ariz. App. 457, 464 (1975)("We do not believe that it is necessary to set forth the complete text of the proposed amendment on the ballot.").

Here, the Publicity Pamphlet provided voters with the necessary information regarding the Transportation Plan and Tax. There was nothing misleading, false or confusing about this language. The Pamphlet contained the specific details regarding the scope of the Tax and was mailed to "each household containing a registered voter in Pinal County". *See* Exhibit 2 at 14-15; A.R.S. § 48-5314(C). In particular, the Pamphlet included a summary asking voters if they "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 business activity upon every person engaging or continuing in the business of selling tangible personal property at retail . . . ." *See id.* at 18. The description also specifies the variable rate on retail sales, which is one-half percent on the first $10,000 of gross income and zero percent on gross income over $10,000 as required by A.R.S. § 42-6106(C). By using the word "including," the Pamphlet instructed voters that the tax was intended to have an

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extensive base, but that there was a modified/variable rate in the context of retail sales.

Alternatively, the Plaintiffs argue that the voters did not establish a "variable" rate for retail sales as authorized by A.R.S. § 42-6106(C), but instead created a new retail classification for sales under and over $10,000. This claim is contradicted by the express wording of A.R.S. § 42-6106(C). *State ex rel. DES v. Pandola*, 243 Ariz. 418, 419 (2018) (the statute's plain language provides the best indicator of the legislature's intent).[6] As Plaintiffs note, A.R.S. § 42-6106(B)(1) provides that "[t]he tax shall be levied and collected… [a]t a rate of not more than ten per cent of the transaction privilege tax rate prescribed by [A.R.S. § 42-5010(A)] to *each person engaging or continuing in the county in a business taxed under chapter 5, article 1 of [Title 42]*." (Emphasis added). Section 42-6106(C) allows the tax to be collected at a "modified" or "variable" rate so long as that rate is "specified in the ballot proposition."

The common use of the word "variable" means "able or apt to vary; subject to variation or changes". WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED (G. & C. MERRIAM CO. 1964), *available at* www.merriam-webster.com; A.R.S. § 1-213 (words shall be construed according to the common and approved use). The common use of the word "modified" means to make a "basic or important change in". *Id.* This is precisely what was done here. The rate on retail sales changes depending on whether the gross income from a retail sale exceeds $10,000, as approved by the voters. As a result, because the Plaintiffs cannot show that the Tax created a new classification or failed to create a variable rate as described by the statute, their claims are not likely to succeed on the merits.

3. <u>The Tax Violates Neither the Equal Protection nor Special Law Provisions of the Arizona Constitution.</u>

To sustain their final two claims, Plaintiffs must overcome the "strong presumption

[6] When the Arizona Legislature first enacted A.R.S. § 42-6106 (previously numbered A.R.S. § 42-1483) in 1990, it specifically indicated its intent to permit specific areas in the state (i.e. Pinal County) to address their "unique" transportation funding needs by "certain unique strategies" and gave these areas the flexibility and discretion to do so by imposing a variable or modified tax rate. 1990 Ariz. Sess. Law, Ch. 380, § 1 (Legislative intent) (2nd Reg. Sess.).

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of [constitutionality]" favoring the Tax. *State v. Tocco*, 156 Ariz. 116, 119 (1988). When evaluating the constitutionality of a law, any doubt must be resolved in favor of upholding the law. *Planned Parenthood v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 268 (App. 2011) ("[U]nless a statute offends 'the essence of a fundamental right' or involves a suspect classification, we presume that the legislature acts constitutionally, and will uphold a statute unless it is clearly unconstitutional."). Furthermore, "[c]ourts generally afford substantial deference to legislative enactments." *Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 220 Ariz. 587, 595 (2009).

a. Equal Protection Clause

Because Proposition 417 does not impact a fundamental right or suspect class, it "will be upheld if it has any conceivable rational basis to further a legitimate governmental interest." *Arizona Downs v. Arizona Horsemen's Found.*, 130 Ariz. 550, 555 (1981). "In determining whether a statute meets the rational basis standard, [courts] must first ascertain whether the challenged legislation has a legitimate purpose and then determine if it is reasonable to believe that the classification will promote that purpose." *Big D Constr. Corp. v. Court of Appeals*, 163 Ariz. 560, 566 (1990).

Rational basis review "is especially deferential in the context of classifications made by complex tax laws." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992); *see also City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) ("When local economic regulation is challenged . . . this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . States are accorded wide latitude in the regulation of their local economies under their police powers."); *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959) (holding that states, when adopting tax regimes, are "not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.").

Applying this standard, Arizona and other courts have upheld the constitutionality of statutes and local laws providing for disparate tax treatment. *See e.g. Flagstaff Vending*

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Co. v. Flagstaff, 118 Ariz. 556, 560 (1978) (upholding a statute that provided for disparate tax treatment among different businesses because, among other reasons, "a government may validly foster what it conceives to be a beneficent enterprise"); *see also Pacific Gas & Electric Co. v. City of Oakland*, 103 Cal. App. 4th 364 (Cal. App. 2002) (finding rational basis for a statute which taxed a utility company at a higher rate than grocers and automobile dealers).[7]

Proposition 417 serves the legitimate governmental interest of raising tax revenues to pay for the Regional Transportation Plan. The $10,000 threshold on sales of tangible personal property at retail furthers the Tax's purpose in two main ways. First, the threshold ensures that consumers will continue to purchase expensive items in Pinal County. Specifically, if the threshold did not exist, consumers would likely go to neighboring Maricopa and Pima counties to purchase expensive items, thereby decreasing the overall tax revenue. Second, without the threshold, manufacturers and retailers of retail items sold for $10,000 or more would be more likely to leave Pinal County to avoid the tax, thereby decreasing the overall tax revenue to the county.

In short, the threshold rectifies certain effects of the Tax felt by consumers, retailers, and manufacturers of large ticket items. Sellers and consumers of small ticket items are differently situated than those who specialize in large ticket items. *See State Comp. Fund v. Symington*, 174 Ariz. 188, 194 (1993) ("One test for reasonableness of a classification is whether there is a substantial difference between those within and those without the class."). For example, without the threshold, the tax would have a $500 impact on a $100,000 piece of machinery. With the threshold in place, the piece of machinery would only incur a $50 tax—an amount not high enough to motivate consumers and retailers to take their large ticket business outside Pinal County. For these reasons, the threshold bears

[7] The Pinal Defendants note that Proposition 417 largely mirrors the variable rate structure authorized by and implemented by multiple Arizona cities and towns under the Model City Tax Code. *See* Model City Tax Code § 460(d). The Director of the Arizona Department of Revenue serves as an ex officio member of the Municipal Tax Code Commission, provides support staff and meeting accommodations for the Commission, and maintains the official copy of the Model City Tax Code. A.R.S. §§ 42-6051(2), -6052(A), (C), -6053. The Department acknowledges that this variable rate structure is permitted by the Model City Tax Code. *See* Department's Answer, at ¶ 30.

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a rational relationship to the legitimate purpose of maximizing tax revenues and reflects an important policy decision made by the Pinal RTA members to ensure economic viability, growth and the avoidance of existing businesses leaving the region for neighboring counties.

b. Special Law Clause

To avoid running afoul of the Special Law provision of the Arizona Constitution, (1) the law must have a rational relationship to a legitimate legislative objective, (2) the classification the law makes must be legitimate, encompassing all members that are similarly situated, and (3) the classification must be elastic, allowing other individuals or entities to come within and move out of the class. *Gallardo v. State*, 236 Ariz. 84, 88 (2014) (quoting *Republic Inv. Fund I v. Town of Surprise*, 166 Ariz. 143, 149 (1990)).

i. Rational Relationship & Inclusiveness

As noted above, the threshold bears a rational relationship to a legitimate purpose of raising tax revenues and Proposition 417 therefore survives rational basis scrutiny. The classification threshold is also legitimate and encompasses all members of the relevant class and is not over or under inclusive. *Id.* at 89; *see also Republic Inv*., 166 Ariz. at 150 ("The statute must apply equally to all in a similar situation coming within its scope."). The threshold is sufficiently inclusive because it applies to any and all retail sales and does not make any specific reference or exemption for certain goods or industries. As described above, the threshold was instituted to ameliorate the negative effects of an increased tax on certain items. Therefore, the threshold is sufficiently inclusive as it applies equally to all similarly situated consumers, retailers, and manufacturers.

ii. Elasticity

Lastly, the test requires that "the classification must be elastic, or open, not only to admit entry of additional persons, places, or things attaining the requisite characteristics, but also to enable others to exit the statute's coverage when they no longer have those characteristics." *Republic Inv.*, 166 Ariz. at 150 (citations omitted). "A statute worded so as to admit entry and exit from the class implies that the class formation was separate from

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consideration of particular persons, places, or things and, thus, not intended as special or local in operation." *Id.* at 150-151.

The threshold applies to the first $10,000 of all retail transactions. To fall within the threshold, the only condition is the price of the specific good sold. Accordingly, consumers, retailers, and manufacturers are free and able to move in and out of the threshold depending on the item being sold. And, businesses may simultaneously be inside and outside of the threshold at one time, as many companies sell different items for less and more than $10,000. As consumers and retails can always choose to buy/sell items falling above and below the $10,000 threshold and thus exit/enter the classification on a whim, the classification is sufficiently elastic.

As a result of the threshold's rational relationship to raising tax revenues, its global application to all consumers, retailers, and manufacturers, and its ability to admit entry and exit from the class, it survives scrutiny under the Special Law Clause.

B. <u>Any Injury that Plaintiffs Will Suffer is Monetary and Therefore not Irreparable as a Matter of Law.</u>

This case centers on the imposition and collection of a tax, and all potential injuries are therefore monetary in nature. For this reason alone, the Plaintiffs cannot satisfy the third required element for obtaining a preliminary injunction. *See Fin. Assocs., Inc. v. Hub Properties, Inc.*, 143 Ariz. 543, 546 (App. 1984) (upholding denial of a preliminary injunction because "monetary damages would suffice" to compensate the plaintiff if successful). Additionally, the Pinal Defendants have agreed to hold all money collected pursuant to Proposition 417 in escrow pending the resolution of this and a related case. Accordingly, not only *can* the Plaintiffs be made whole by receiving a refund plus interest, but the Pinal Defendants have taken the necessary steps to ensure that such funds are available if Plaintiffs prevail.

C. <u>Enjoining a Voter-Approved Law is Highly Disfavored and Not Supported by Public Policy.</u>

Arizona law prohibits an injunction from being granted "to prevent enforcement of a public statute by officers of the law for the public benefit." A.R.S. § 12-1802(4). The

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measures passed by the voters through Propositions 416 and 417 qualify as a "public statute" for purposes of A.R.S. § 12-1802(4). *See Church of Isaiah 58 Project of Arizona, Inc. v. La Paz County*, 233 Ariz. 460, 464 (App. 2013) (referring to A.R.S. § 12-1802(4) when discussing injunction of tax law). The court has long recognized the "well-established policy of this state to prevent the validity of a tax from being tested by injunctive means." *State ex rel. Lane v. Superior Court*, 72 Ariz. 388, 391 (1951). This policy is "based on the realization that to so permit injunction would be, at least temporarily, to emasculate all tax measures." *Id.* The only exception is where "the challenged taxes have been levied without semblance of authority 'and resulting injury cannot be adequately provided by proceedings at law.'" *Church of Isaiah*, 233 Ariz. at 464-65 (quotation omitted).

In this case, the Tax was approved by a majority of the qualified voters in Pinal County. The law was enacted pursuant to statute and the procedures by which it was approved complied with the applicable law. Furthermore, the final decision on whether to enact the tax was resolved by the voters in Pinal County. The County electorate had the authority to enact the Tax, and this Court should not enjoin an act of the people absent a compelling reason. And because the Plaintiffs can apply for a refund of any taxes they believe may have been inappropriately levied, their injuries can be remedied by law.

Finally, every month that the tax is enjoined impairs the ability of the RTA to issue bonds to fund the Plan and could affect the bond ratings. *See* A.R.S. §§ 48-5341 *et seq*. Without bonds, a project of this magnitude could not be undertaken as it would be infeasible to extend construction over twenty years. For these reasons, public policy strongly disfavors an injunction in this case.

CONCLUSION

For the reasons above, the Plaintiffs have failed to satisfy the required elements for a preliminary injunction and the Motion should be denied.

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