ARIZONA COURT OF APPEALS
DIVISION ONE

WILLIAM JAMES "JIM" LANE, YVONNE CAHILL, SUSAN WOOD, Plaintiffs/Appellants, v. CITY OF SCOTTSDALE; MARICOPA COUNTY, Defendants/Appellees.	Court of Appeals Division One No. 1 CA-CV 24-0545 EL Maricopa County Superior Court No. CV 2024-015767

BRIEF OF *AMICUS CURIAE* LEAGUE OF ARIZONA CITIES AND TOWNS IN SUPPORT OF APPELLEES CITY OF SCOTTSDALE (WITH CONSENT)

(Expedited Election Matter)

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This amicus curiae brief ("**Brief**") is submitted by the League of Arizona Cities and Towns ("**League**") under Rule 14 and Rule 16 of the Arizona Rules of Civil Appellate Procedure. The Brief is being filed with the written consent of Plaintiffs/Appellants William James "Jim" Lane, Yvonne Cahill, and Susan Wood ("**Challengers**") and Defendant/Appellee City of Scottsdale ("**City**" or **"Scottsdale**"). Defendant/Appellee Maricopa County is a nominal party and stated that it does not object to the filing of this Brief. No other person or entity authored this Brief or made a monetary contribution for its preparation or submission.

The League is a voluntary membership association of all the 91 incorporated cities and towns in Arizona, representing approximately 79% of the state's total population. The League provides collective advocacy, education, training, technical assistance, and information-sharing for and amongst these members. The League also serves as a resource to local election officials by providing information and training regarding election-related matters. Accordingly, the League's perspective both complements the City's position and helps broaden the Court's analysis to include the potential adverse impacts on other cities and towns. The League is advised by its Amicus Committee, which identified this case for statewide significance.

The League respectfully submits this Brief in support of the City because the issue presented implicates important statewide issues regarding local elections and judicial authority to remove a local legislative measure from the ballot. Cities and towns in Arizona submit a significant number of matters to their voters, including measures for bonds (general obligation bonds; revenue bonds; street and highway improvement bonds; special improvement district bonds), budget adjustments (home rule option; base adjustment; emergency or one-time override), taxes, franchises, improvement districts, charter adoptions, charter amendments, and general plans.

Here, the superior court correctly dismissed this case with prejudice, finding no legal fault with the City's Proposition 490. If this valid proposition is removed from the ballot, it would create legal uncertainty and make it more challenging for local officials to craft ballot language that is certain to survive pre-election judicial scrutiny. The administration of local elections would become increasingly difficult, fraught with risk, and subject to partisan manipulation. Election processes would be exposed to risks of delays, political mischief, and litigation.

Tax measures provide citizens with the opportunity to voice their preferences directly to their local governments. Having Proposition 490 removed from the ballot would rob Scottsdale citizens of that opportunity, underestimate their intelligence, and violate the Arizona Constitution. Ultimately, such judicial interference would

only serve to dampen confidence in the integrity, fairness, and validity of local elections. The Court must avoid such results and affirm.

ISSUE PRESENTED FOR REVIEW

The issue before this Court is whether the ballot description for Proposition 490 is legally sufficient to survive pre-election removal from the ballot.[1]

INTRODUCTION

Courts do not tell the State Legislature what bills they should draft, what language they should use, or what matters they should refer to the voters. There is no reason to treat Proposition 490 any differently.

The separation of powers clause of the Arizona Constitution prohibits the judicial branch from intervening with the legislative process. *Mecham v. Gordon*, 156 Ariz. 297, 302 (1988); *Queen Creek Land & Cattle Corp. v. Yavapai County Board of Supervisors*, 108 Ariz. 449, 451 (1972); *Adams v. Bolin*, 74 Ariz. 269 (1952); *City of Phoenix v. Superior Court*, 65 Ariz. 139 (1946); *Renck v. Superior Court*, 66 Ariz. 320, 325–26 (1947). In *Queen Creek Land and Cattle Corporation*,

[1] The ballot description is the sole issue before this Court. Additionally, Appellants are clear that they are only seeking the reversal of the judgment dismissing Count I: Misleading ballot language under A.R.S. § 19-101. Opening Brief at 12. Neither § 9-500.14 nor the Q&A are within the scope of review. The Complaint alleged the Q&A violated § 9-500.14. IR 1 at 14-15. The Complaint did not allege that the ballot description violates § 9-500.14. Additionally, there is also no private right of action under § 9-500.14 as the superior court recognized. IR 43 at 10. The League could not find any case where § 9-500.14 was used as the basis for invalidating a ballot measure.

the Arizona Supreme Court explained that "the constitutional reservation of initiative and referendum powers establishes the electorate as a coordinate source of legislation with the constituted legislative bodies." 108 Ariz. 449, 451 (1972). Thus, in the absence of *express* statutory power, this Court lacks jurisdiction to interfere with the enactment of legislation via ballot measure. *See, e.g., State v. Osborn*, 16 Ariz. 247 (1914); *Williams v. Parrack*, 83 Ariz. 227 (1957).

There is no express statutory power to remove Proposition 490 from the ballot. The "basic thrust" of Proposition 490 is articulated accurately throughout the proposition, including the ballot description. Accordingly, this Court must affirm.

ARGUMENT

1. There is no legal basis to disqualify Proposition 490 from the ballot.

All cities and towns in Arizona are statutorily authorized to "submit *any issue* relating to a transaction privilege tax, sales, use, franchise or other similar tax or fee, *however denominated*, to the qualified electors" of their city or town at any regular or special municipal election.[2] A.R.S. § 42-6006 (emphasis added). Similarly, A.R.S. § 16-204(F)(4) allows municipalities to hold elections to approve transaction privilege taxes. Some cities, like Scottsdale, may have additional authority to submit matters to their voters based on their local charters. *See* ARIZ. CONST. ART. XIII, § 2;

[2] Cities and towns are also expressly given the right to "spend public monies of the city or town to cover the expenses of the election on that issue." A.R.S. § 42-6006.

SCOTTSDALE CHARTER, art. 10, § 1 (Jan. 8, 2019) (authorizing the City to submit a ballot proposition); *see also, State ex rel. Brnovich v. City of Tucson*, 251 Ariz. 45, 47 (2021) (stating that a charter serves as a local constitution). Moreover, the procedures for these legislative submittals to local voters must be "*as nearly as practicable* the same as the procedure relating to initiative and referendum provided for the state at large, except the procedure for verifying signatures may be established by a city or town by charter or ordinance." A.R.S. § 19-141(A) (emphasis added and citations omitted).

Challengers are not asking this Court to "tweak" the language of Proposition 490 to fix an alleged defect before it goes to the ballot. They are seeking to remove Proposition 490 from the ballot altogether. This is an extreme judicial remedy. Courts will generally review legal challenges to ballot measures *after* an election to avoid interfering with a legislative function and disrupting the electoral process. *See, e.g., Osborn*, 16 Ariz. at 250 (pre-election judicial review is limited to form and signature).

Challengers allege Proposition 490 is legally defective under the "standard" established in *Molera v. Hobbs*, 250 Ariz. 13 (2020) ("***Molera II***"). *Molera II* involved a legal challenge to the sufficiency of a ballot description under a 2020 version of A.R.S. § 19-102(A) (limiting the description to one hundred words, compared to two hundred words under the current statute). Section 19-102(A) deals

with initiative petitions and currently requires "a description of not more than two hundred words of the principal provisions of the proposed measure or constitutional amendment." A.R.S. § 19-102(A). *Molera II* interpreted the "principal provisions" language in the statute as implicitly providing two grounds on which to challenge a ballot description under § 19-102(A): (1) where a sponsor omits a principal provision of the measure from the ballot description; and (2) where "the description either communicates objectively false or misleading information or obscures the principal provisions' basic thrust." *Molera II*, 250 Ariz. at 20.

There is no legal basis to disqualify the City's proposition based on *Molera II*'s reading of § 19-102(A) because Challengers did not object to the ballot description under § 19-102(A) in their Complaint; they did so under § 19-101[3] (with references to § 19-125(D) and § 19-141) and ARIZ. CONST. ART. II, § 4. IR 1 at 13-16. Even if *Molera II* applies to this case, the ballot description would still survive scrutiny under its "standard."

In reviewing challenges to the ballot description under § 19-102(A), courts consider the meaning a reasonable person would ascribe to the description. *See Molera II*, 250 Ariz. at 20 ("If the chosen language would alert a reasonable person

[3] *Molera II* also did not mention § 19-101—the statute in Count I of Challengers' Complaint. IR 1 at 13-14. This statute specifically deals with referendum petitions that are filed and circulated by citizens to challenge an ordinance or law. *See* A.R.S. § 19-101.

to the principal provisions' general objectives, that is sufficient."); *Arizona Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 48 (2019). The parties agree that the City's ballot description satisfies the word limit and includes the principal provisions of Proposition 490. At the core of the Complaint is Challengers' displeasure with the phrasing of the ballot description. Challengers contend it is written in an "unfair, deceptive, and biased manner." They claim the phrase "replace and reduce" amounts to a "bait and switch" that "promises a 'tax reduction' but delivers a tax increase." Opening Brief at 4. Instead of offering alternate language that would satisfy their test, they ask the Court to strike the measure from the ballot entirely.

The "basic thrust" of Proposition 490 is articulated accurately throughout the proposition. The ballot description says that, if voters approve Proposition 490, it will allow a fractional tax rate to continue uninterrupted at a reduced 0.15% rate to fund certain enumerated special purposes. If voters reject Proposition 490, then the fractional tax rate will expire by its own terms. All of this is accurate.

Challengers cannot hyperfocus on three words ("replace and reduce") and ignore the word "expiring" or the rest of the ballot description. The proposition must be read in context. *See Protect Our Arizona v. Fontes*, 254 Ariz. 288, 294 (2023). The fact that Challengers prefer different terminology does not matter. The description does not need to be impartial or "detail every provision." *Arizona*

Chapter of the Associated Gen. Contractors of Am., 247 Ariz. at 48. *Molera II* confirmed that sponsors are free to describe the measure in a positive way, emphasize its most popular features, and cast the description in the best light to garner support. *See Molera II*, 250 Ariz. at 21 (noting that a sponsor is not required to use neutral wording); *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 152–53 (2013) (same).

Proposition 490 meets the "standard" in *Molera II*. Will a "yes" vote replace the tax rate from 0.20% to 0.15%? Yes. Will a change from 0.20% to 0.15% constitute a reduction in the tax rate? Yes. If the Court determines that the "phrasing" of Proposition 490 is invalid, then surely other measures do not belong on the 2024 general election ballot. For example, it is difficult to imagine how a voter would know the "basic thrust" of "Proposition 312: HCR 2023 – Relating to property tax" based on this official "title" alone. *See* Arizona Secretary of State, OFFICIAL BALLOT MEASURE LANGUAGE 2024, July 7, 2024, at 11, https://azsos.gov/media/308 (last visited Aug. 8, 2024). While its "descriptive title" provides more information, its summary regarding the effect of a "yes" vote is missing critical information about its principal provisions. *See id*. It says a "yes" vote will give property owners in Arizona the "right to apply for a refund from their most recent property tax payment" up to a certain amount. *See id*. (citations omitted). But not *all* property owners in Arizona would have that right. And the right would not apply to *every* type of

property tax. It would only apply to *primary* property taxes, not *secondary* taxes. Worse, not every "taxing entity" in Arizona assesses a primary property tax.

As written, Proposition 490 is neither objectively false nor misleading – and nothing in the ballot description obscures the basic thrust of its principal provisions. For these reasons, the Court must affirm.

2. Pre-election disqualification would be unconstitutional.

This case calls an important question about the Arizona Constitution: is the legislative power of the people equal to that of the legislature as the framers intended? *See State v. Osborn*, 16 Ariz. 247, 250 (1914). The answer to that question must be "yes."

Arizona's framers went further than their federal counterparts by giving the people direct lawmaking power. *See* ARIZ. CONST. ART. IV, pt. 1, § 1(2); *Toma v. Fontes*, No. 1 CA-CV 24-0002, 2024 WL 3198827, at *12 (Ariz. Ct. App. June 27, 2024). They also wanted this power to be as great as that of the legislature. *See* ARIZ. CONST. ART XXII, § 14 (providing that any law that may be enacted by a legislature may be enacted by the people via initiative); *see also Osborn*, 16 Ariz. at 249–50; *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987) (recognizing that the legislative power of the people is as great as that of the legislature); *Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997) (holding that courts are powerless to determine the substantive validity of voter initiatives unless and until they are adopted because voter initiatives

are part of the legislative process and receive the same judicial deference as proposals before the state legislature). They also understood that the separation of powers is critical to safeguard against overreach. *See* ARIZ. CONST. ART. III; *Toma*, 2024 WL 3198827, at *12.

Challengers seek to invalidate a ballot measure based on the Arizona Supreme Court's interpretation of a statute that was never mentioned in their Complaint. Thus, the Court has no place disqualifying Proposition 490 based this decision. Regardless, Proposition 490 is truthful, and nothing obscures the basic thrust of its principal provisions.

To the extent that *Molera II* applies, its "standard" represents an unconstitutional usurpation of legislative power by the judiciary. The power of taxation is legislative. ARIZ. CONST. ART. IX, § 1 (proving that the "power of taxation shall never be surrendered, suspended, or contacted away.") (citation omitted); *Apache Cnty. v. Atchison, T. & S. F. Ry. Co*., 106 Ariz. 356, 359 (1970). Nowhere in the Arizona Constitution or state law does it authorize courts to disqualify a tax measure prior to an election based on the "manner" of describing its principal provisions. Instead, the power to disqualify an initiative measure prior to the election under § 19-102(A) is a power the court gave to itself in *Molera v. Reagan*, 245 Ariz. 291 (2018) ("***Molera I***"). *Molera I* was the first time a citizen initiative was removed from the ballot, and it opened a Pandora's Box of legal challenges and confusion.

Two years later, *Molera II* acknowledged the confusion and decided to rephrase its judicially created "standard" under § 19-102(A) to assist the sponsors of citizen initiatives, opponents, and courts in determining whether the "manner" of describing the principal provisions could avoid pre-election disqualification. *Molera II*, 250 Ariz. at 19.

There is no reason to extend *Molera II* to the City's legislative referral. Neither the legislature nor the people authorized a judge to police and remove Proposition 490 based on the "manner" of describing its principal provisions. Accordingly, this Court lacks jurisdiction to disqualify it from the ballot. *See, e.g., Osborn*, 16 Ariz. at 250. Proposition 490 should be entitled to receive the same deference that is afforded to other legislation. *Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm'n*, 220 Ariz. 587, 595 (2009) ("Courts generally afford substantial deference to legislative enactments.")

Proposition 490 is the result of policymaking—and it is a legitimate step in the legislative process. Removing Proposition 490 from the ballot would unduly interfere with this legislative process, usurp the policymaking power of the City Council, violate the core political rights of Scottsdale citizens, and conflict with foundational government principles of separation of power. This Court must exercise judicial restraint and affirm.

CONCLUSION

For the foregoing reasons, this Court should affirm.

RESPECTFULLY SUBMITTED this 8th day of August 2024 by:

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