

K-12 Inflation Funding Lawsuit

In *Cave Creek v. Ducey*, the Arizona Supreme Court ruled in September 2013 that under Proposition 301 (from November 2000) the state must adjust the K-12 “base level” annually for inflation. The base level serves as the starting point for computing formula funding for Arizona public schools and for FY 2014 equals \$3,327 (rounded) per pupil (A.R.S. § 15-901B2). If always inflated under Proposition 301 it instead would equal \$3,560 (rounded) per pupil for FY 2014, or \$233 more. In its September 2013 ruling, the Arizona Supreme Court sent the case back to Superior Court to determine the state’s financial commitment for base level inflation adjustments not made in recent years. In such years, the state inflated the transportation and charter school “additional assistance” portions of the K-12 formula, but did not also inflate the base level.

The attached documents indicate that the plaintiffs are seeking funding for 2 issues: 1) an increase in the base level to \$3,560 (rounded) per pupil prior to any additional inflation adjustment being made for FY 2015, and 2) \$1.26 billion in back payments for unfunded inflation since FY 2009 to be paid out over 5 years starting in FY 2015.

Table 1 below shows that the base level “reset” would cost approximately \$317 million in FY 2015 plus “back payments” of another \$253 million for a combined total of \$569 million.

The 3-year cumulative cost for both items would be approximately \$1.7 billion, so would increase state costs through FY 2017 by \$1.7 billion above the 3-year spending totals assumed in the JLBC Baseline.

The 5-year cumulative cost would be approximately \$2.9 billion.

Table 1			
Plaintiff Proposal on K-12 Inflation Lawsuit			
Fiscal Year	Base Level Increase (\$)	Back Payments (\$)	Total (\$)
2015	\$ 316,837,500	\$ 252,593,300	\$ 569,430,800
2016	320,639,700	252,593,300	573,233,000
2017	324,808,100	252,593,300	577,401,400
2018	329,355,400	252,593,300	581,948,700
2019	334,295,700	252,593,300	586,889,000
3-year total	962,285,300	757,779,900	1,720,065,200
5-year total	1,625,936,400	1,262,966,500	2,888,902,900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Donald M. Peters 005929
LASOTA & PETERS, PLC
3030 North Third Street, Suite 905
Phoenix, Arizona 85012
Telephone: (602) 248-2900
dpeters@lasotapeters.com

Timothy M. Hogan 004567
ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST
202 E. McDowell, Suite 153
Phoenix, Arizona 85004-4533
Telephone: (602) 258-8850
thogan@aclpi.org

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CAVE CREEK UNIFIED SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

vs.

DOUG DUCEY in his capacity as State
Treasurer and STATE OF ARIZONA,

Defendants.

No. CV2010-017113

**MEMORANDUM OF LAW RE
REMAINING ISSUES**

(Assigned to the Honorable Katherine
Cooper)

This case has been remanded to this Court following a decision by the
Arizona Supreme Court. A copy of that decision is attached for the Court's
convenience. (Attachment A.)

1 In the original proceedings in this Court, Plaintiff's Complaint was
2 dismissed. As a result, some major issues in the case were never reached. Those
3 issues must be resolved before the Court can determine the appropriate form of
4 declaratory judgment to be entered.

5
6 I. THE REMAINING ISSUES
7

8
9 A. *The Base Level and Its Recent History*
10

11 The funding with which Arizona's school districts pay salaries and
12 expenses is called "maintenance and operations" or "M&O" funding. The amount
13 of M&O funding that a school district receives in a given year is determined by a
14 statutory formula. Although the details of the formula are very complicated, the
15 formula is conceptually simple. The number of students who attend each district is
16 multiplied by a dollar figure known as the base level. After the calculation is
17 adjusted in many ways, the result is the M&O funding that a school district will
18 receive.
19
20

21 The base level is defined in A.R.S. § 15-901(B)(2). It is currently set at
22 \$3,267.72.

23 In the year 2000, Arizona's voters approved Proposition 301. Among other
24 things, Proposition 301 required that the Legislature adjust the base level each
25 year for inflation. That requirement is now codified at A.R.S. § 15-901.01:
26
27

1 If approved by the qualified electors voting at a statewide general election,
2 for fiscal years 2001-2002 through 2005-2006, the legislature shall increase
3 the base level or other components of the revenue control limit by two per
4 cent. For fiscal year 2006-2007 and each fiscal year thereafter, the
5 legislature shall increase the base level or other components of the revenue
6 control limit by a minimum growth rate of either two per cent or the change
7 in the GDP price deflator, as defined in § 41-563, from the second
8 preceding calendar year to the calendar year immediately preceding the
9 budget year, whichever is less, except that the base level shall never be
10 reduced below the base level established for fiscal year 2001-2002.

11 The adjustments required by this provision do not increase school funding in
12 constant dollars. Instead, such adjustments merely mitigate the decrease in
13 purchasing power that school districts would otherwise experience as the result of
14 inflation.

15 For a number of years following the passage of Proposition 301, the
16 Legislature made the required adjustments to the base level. It made no adjustment
17 to the base level, however, in fiscal years 2009-10 through 2012-13. It made an
18 adjustment for 2013-14 that Plaintiffs contend was insufficient. The Legislature's
19 failure to make the required adjustments prompted this lawsuit. The Arizona
20 Supreme Court held in this case that the Legislature must abide by the directive in
21 A.R.S. § 15-901.01 that it adjust the base level each year.

22 *B. Unless They Are Corrected, Past Errors in Adjusting the Base Level*
23 *Will Have Significant Future Effects*

24 The formula for inflation adjustments set out in A.R.S. § 15-901.01 is
25 cumulative. Each year's adjustment builds on the adjustments made in past years.
26 A failure to make the appropriate adjustment in one year will throw off all
27

1 subsequent adjustments. That is because the subsequent adjustments will be made
2 from too low a base.

3 In the following table, the second column shows what the base level has
4 actually been for the past six years. The third column shows what the appropriate
5 inflation adjustment pursuant to A.R.S. § 15-901.01 has been in each year. The
6 fourth column shows what the base level would have been each year if
7 adjustments had been consistently and properly made.
8

Year	Legislative base level	Inflation	What base level should have been
FY 2008-09	\$3,291.42	n/a	n/a/
FY 2009-10	\$3,267.72	2.0%	\$3,357.25
FY 2010-11	\$3,267.72	1.2%	\$3,397.54
FY 2011-12	\$3,267.72	0.9%	\$3,428.11
FY 2012-13	\$3,267.72	2.0%	\$3,496.68
FY 2013-14	\$3,326.54	1.8%	\$3,559.62

19
20
21 (See attached declaration of Chuck Essigs, attachment B, ¶¶ 5-7.) As the Court
22 can see, if the Legislature's past errors are not corrected prospectively, the effect
23 of those errors will be compounded every year, as each year's adjustment will be
24 made from a base that is lower than it would be if the law had consistently been
25 obeyed.
26
27

1 II. THE BASE LEVEL MUST BE CORRECTED FOR PURPOSES OF
2 FUTURE ADJUSTMENTS
3

4 To keep all adjustments to the base level hereafter from being incorrect, the
5 Court's judgment should include a declaration that the adjustment in the base level
6 for fiscal year 2014-15 should be made from the corrected figure in the fourth
7 column of the table above, i.e., \$3,559.62. That figure represents what the base
8 level would currently be if the Legislature had followed the law in each of the
9 years when it did not do so.
10

11
12 *A. The Base Level Should Be Corrected to Effectuate the Intent of the*
13 *Voters*

14
15 In construing A.R.S. § 15-901.01, the Court's primary objective should be
16 to effectuate the intent of the voters who approved the measure. *See State v.*
17 *Peyreya*, 199 Ariz. 352, 18 P.3d 146 (App. 2001). The voters who approved
18 Proposition 301 intended that the effects of inflation on school funding be offset.
19 The voters did not intend that the Legislature could ignore the voters' instructions
20 for several years and then resume making inflation adjustments that are too small
21 because of the Legislature's previous failures to obey the law.
22

23 Plaintiffs have found only two cases in which past errors in a cumulative
24 formula were at issue. In both cases, courts held that the past errors had to be
25 corrected prospectively.
26
27

1 A case with many similarities to this one is *Metropolitan School Dist. of*
2 *Pike Tp. v. Department of Local Government Finance*, 962 N.E.2d 705 Ind. Tax.
3 Ct. 2011). A school district’s property rate was determined by a statutory formula
4 that was cumulative, i.e., past calculations affected current calculations. A tax
5 agency had made erroneous calculations in prior years that, if not corrected, would
6 harm the school district on an ongoing basis. The court held that the past errors
7 had to be corrected prospectively. “[L]ogic dictates that previous...calculation
8 errors should not be allowed to corrupt the accuracy of current and future years’
9 calculations.” 962 N.E.2d at 709.

11 A cumulative formula in which past errors affected current calculations was
12 also at issue in *Cape Cod Hospital v. Sebelius*, 630 F.3d 203 (D.C. Cir. 2011).
13 The Department of Health and Human Services had made past errors in
14 calculating Medicare reimbursement rates for hospitals. The methodology it had
15 adopted for making adjustments to reimbursement rates caused the past errors to
16 be incorporated into its current calculations. The court held that the past errors had
17 to be corrected when the Department made ongoing changes to the reimbursement
18 rates.
19
20
21
22
23
24
25
26
27

1 *B. As a Matter of Equity, Adjustments That Should Have Been Made*
2 *Should Be Deemed to Have Been Made*

3
4 Although in Plaintiff's view the base for future adjustments must be
5 corrected to effectuate the voters' intent, this Court can and should reach the same
6 conclusion in the exercise of its equitable powers.

7 Making the required adjustment to the base level is a mathematical,
8 ministerial task. Courts have consistently refused to allow a governmental actor's
9 failure to perform a required, ministerial act to harm innocent third persons. For
10 example, in *Sanders v. Folsom*, 104 Ariz. 283, 451 P.2d 612 (1969), a school
11 district had been denied a substantial amount of state aid that it sought to recover.
12 The aid had been denied because the county board of supervisors had failed to
13 perform a ministerial duty to make a specified levy. The levy was a prerequisite to
14 the school district's obtaining the aid. Because of the failure to make the levy, the
15 court observed, irreparable harm would be done to the children and taxpayers of
16 the school district if the court did not grant equitable relief. The court invoked the
17 maxim that "equity will consider as done that which ought to have been done."
18
19 104 Ariz. at 289, 451 P.2d at 618.
20
21

22 Equity is reluctant to permit a wrong to be suffered without remedy. It
23 seeks to do justice and is not bound by strict common law rules or the
24 absence of precedents. It looks to the substance rather than the form. It will
25 not sanction an unconscionable result merely because it may have been
26 brought about by means which simulate legality. And once rightfully
27 possessed of a case it will not relinquish it short of doing complete justice.

1 104 Ariz. 283, 289, 451 P.2d 612, 618 (quoting *Merrick v. Stephens*, 337 S.W.2d
2 713, 719 (Mo.Ct.App.1960); *quoted and followed in Tom Mulcaire Contracting,*
3 *LLC v. City of Cottonwood*, 227 Ariz. 533, 537, 260 P.3d 1098, 1102 (App.
4 2011). Applying these principles, the court in *Sanders* held that the
5 Superintendent of Public Instruction should treat the school district's application
6 for state aid as if the required levy had actually been made by the board of
7 supervisors. 104 Ariz. at 290, 451 P.2d at 619.

9 The approach taken in *Sanders* accords with that taken in a number of cases
10 from other jurisdictions. In *Commonwealth of Pennsylvania v. Weinberger*, 367
11 F.Supp. 1378 (D.D.C 1973), a number of states sought to compel the executive
12 branch of the federal government to disburse funds that had been appropriated by
13 Congress for the benefit of the states. The court concluded that disbursement of
14 the funds was a mandatory, ministerial duty. Defendants, who had failed to
15 disburse the funds, contended that the expiration of the fiscal year for which the
16 funds had been appropriated had caused a reversion of the funds to the Treasury.
17 Observing that equity will deem done what ought to have been done, the court
18 deemed the funds to have been obligated before the expiration of the fiscal year
19 and ordered the defendants to apportion and disburse the funds. As in *Sanders*,
20 equity was invoked to correct a failure to perform a mandatory act by the
21 government so as to avoid prejudice to innocent third parties.

22 Similarly, where a ministerial act by the government had not been
23 performed, it was deemed to have been done so as to avoid inequity in *State v.*
24
25
26
27

1 *Chambers*, 353 S.W.2d 835 (Mo. App. 1962) (failure to place measure on ballot).
2 Where an agency's errors created a technical barrier to an equitable result, the
3 agency was deemed to have done what it should have done in *Montana Power*
4 *Company v. Federal Power Commission*, 330 F.2d 781 (9th Cir. 1964). To avoid
5 inequity where a ministerial governmental error threatened to harm to an innocent
6 party, the court deemed the government act to have been properly performed in
7 *Cesena v. Du Page County*, 145 Ill.2d 32, 582 N.E.2d 177 (1991).
8

9 In this instance, the Legislature had a mandatory, nondiscretionary duty to
10 adjust the base level each year. Its failure to do so properly for several years will
11 cause substantial future harm to school districts and students unless the Court
12 deems the adjustments that should have been made to have been made. The Court
13 should order the inflation adjustment for 2014-2015 to be calculated on the basis
14 of what the current base level would be if the law had consistently been
15 followed—i.e., \$3,559.62—rather than what the Legislature has most recently
16 defined the base level to be.
17
18

19
20 **III. ADDITIONAL FUNDS THAT SCHOOL DISTRICTS SHOULD HAVE RECEIVED FROM 2009-10 THROUGH 2012-13 SHOULD BE DISBURSED**
21

22
23 Because the Legislature failed to adjust the base level properly for several
24 years, school districts did not receive all the funding in those years that the voters
25 who passed Proposition 301 intended for them to receive. The Legislature's
26 failure to perform a ministerial duty has caused harm to innocent third parties. The
27

1 same equitable considerations that warrant a prospective change in the base level
2 require that the base level for recent years be deemed to have been what it should
3 have been, and that school districts receive the funds that they should have
4 received in the past.

5 Plaintiffs suggest that the remedial disbursements be made over a period of
6 five fiscal years, commencing with 2014-2015. The reason for this approach is
7 that the State is still emerging from a recession. Disbursement of the funds all at
8 once might cause a financial strain to the State, given current revenue levels.

9 Disbursement of those funds over five years will not.

10
11 Obviously, the school years during which the funds in question should have
12 been disbursed are now past. The Court might wonder whether disbursement of
13 the funds at this point would do any good. The answer is yes. The declaration of
14 Kevin Kelty (attachment C) and portions of the declaration of Chuck Essigs show
15 why. M&O funding may be used by school districts for capital expenditures as
16 well as maintenance and operations. See A.R.S. §§ 15-905(F)(1), 15-947(C);
17 declaration of Chuck Essigs at ¶ 11. Schools are constantly in need of capital
18 funding. Roofs, floors, buses and air conditioners wear out. See declaration of
19 Kevin Kelty, attached. Textbooks wear out or become obsolete. *Id.* Most kinds of
20 capital needs, other than new-school construction, have remained fairly constant
21 during the past few years, while funding to meet those needs all but dried up. See
22 declaration of Chuck Essigs at ¶¶ 12-16. As a result, there is a backlog of unmet
23 capital needs. Meeting the unmet capital needs of plaintiff Casa Grande
24
25
26
27

1 Elementary School District, for example, would require almost twice as much
2 money as that district will receive if this Court orders the undisbursed inflation
3 funding from previous years to be disbursed. Declaration of Kevin Kelty, ¶ 3 and
4 throughout. The financial needs of the Casa Grande District are fairly typical of
5 the financial needs of Arizona's other school districts. Declaration of Chuck
6 Essigs at ¶ 12.

7
8 The Court should render judgment that the State is still obligated to
9 disburse the funds that should have been disbursed in recent years. Such a
10 judgment is needed both to effectuate the intent of the voters who passed
11 Proposition 301 and to achieve equity.

12
13
14 IV. OTHER MATTERS

15
16 A draft proposed form of judgment is attached as attachment D. While the
17 proposed judgment will probably require revision, it may help the Court to see
18 what kind of judgment Plaintiffs are seeking.

19
20 The proposed judgment calls for the exoneration of two bonds that
21 Plaintiffs were previously required to file. It also provides for an award of
22 attorneys' fees on appeal and in this Court.

1 January 21, 2014.

2 /s/ Donald M. Peters

3 Donald M. Peters
4 LaSota & Peters, PLC
5 3030 North Third Street, Suite 905
6 Phoenix, Arizona 85012
7 Telephone: (602) 248-2900

8 Timothy M. Hogan
9 Arizona Center for Law
10 In the Public Interest
11 202 E. McDowell, Suite 153
12 Phoenix, Arizona 85004-4533
13 Telephone: (602) 258-8850

14 Attorneys for Plaintiffs

15 COPY hand-delivered this 21st
16 day of January, 2014, to:

17 The Honorable Katherine Cooper
18 Maricopa County Superior Court
19 101 West Jefferson
20 Phoenix, Arizona 85003-2243

21 COPY mailed this 21st day of
22 January, 2014, to:

23 Kevin D. Ray
24 Jinju Park
25 Office of the Attorney General
26 State of Arizona
27 1275 West Washington Street
Phoenix, Arizona 85007-2926

Peter A. Gentala
Office of the Speaker
Arizona House of Representatives
1700 West Washington Street, Suite H
Phoenix, Arizona 85007-2844

1 Gregrey G. Jernigan
2 Office of the President
3 Arizona State Senate
4 1700 West Washington Street, Suite S
5 Phoenix, Arizona 85007-2844
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

/s/ Toni Vanchieri

ATTACHMENT A

WestlawNext

Cave Creek Unified School Dist. v. Ducey, 2013 P.3d 1152 (PDF), 233 Ariz. 1, 308 P.3d 1152, 297 Ed. Law Rep. 538, 670 Ariz. Adv. Rep. 31 (Approx. 14 pages)

233 Ariz. 1

Supreme Court of Arizona.

CAVE CREEK UNIFIED SCHOOL DISTRICT; Casa Grande Elementary School District; Crane Elementary School District; Palominas Elementary School District; Yuma Union High School District; Arizona Education Association; Arizona School Boards Association; Scott Holcomb; Frank Hunter; and Nancy Putman, Plaintiffs/Appellants,

v.

Doug DUCEY, in his Capacity as State Treasurer; and State of Arizona, Defendants/Appellees.

No. CV-13-0039-PR. Sept. 26, 2013.

Synopsis

Background: School districts and other parties brought action against state for a declaratory judgment regarding legislature's obligations under voter-approved statute requiring certain inflation adjustments to the annual budget for K-12 public schools. The Superior Court, Maricopa County, No. CV2010-017113, Kenneth Mangum, J., dismissed complaint for failure to state a claim. Plaintiffs appealed. The Court of Appeals, 231 Ariz. 342, 295 P.3d 440, Brown, J., reversed and remanded for entry of declaratory judgment in favor of plaintiffs. The Supreme Court granted state's petition for review.

Holdings: The Supreme Court, Pelander, J., held that:

- 1 Arizona constitution did not preclude voters from enacting by referendum a statutory directive that limited legislature's plenary legislative power by requiring that annual state budgets include adjustments for inflation to base support levels for K-12 public schools; and
2 annual state budgets that failed to include adjustments for inflation to base support levels for public schools, as directed by a voter-approved referendum, violated the Voter Protection Act (VPA).

Opinion of Court of Appeals affirmed; case remanded.

West Headnotes (17)

Change View

- 1 Education Apportionment and Disbursement Challenge by school districts to state budgets that did not include adjustments for inflation to base support levels for public schools, as provided for under voter-approved referendum, was not moot, though budget for current fiscal year did contain the adjustment; funding of that adjustment for current fiscal year did not moot districts' claims regarding prior or future years' funding levels. A.R.S. § 15-901.01.

RELATED TOPICS

- Schools
Public Schools
Actions Involving Improper Use of Federal Funds
Fiscal Management, Public Debt, and Securities
State Court Attorney Fee Award
Statutes
Power to Repeal
Excess of Constitutional Power of Legislature

- 2 **Amicus Curiae** Powers, functions, and proceedings
Amicus curiae are not permitted to create, extend, or enlarge the issues before the court.
- 3 **Constitutional Law** Burden of Proof
A party challenging a statute generally has the burden of establishing that it is unconstitutional.
- 4 **Constitutional Law** Presumptions and Construction as to Constitutionality
Constitutional Law Clearly, positively, or unmistakably unconstitutional
When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, the Supreme Court presumes the statute is constitutional and will uphold it unless it clearly is not.
- 5 **Statutes** Submission to legislature; legislative action
It is presumed that, in drafting and referring a proposition for voter approval, the legislature acted with full knowledge of relevant constitutional provisions, including the Voter Protection Act (VPA). A.R.S. Const. Art. 4, Pt. 1, § 1(6)(B, C), (14).
- 6 **Constitutional Law** State constitutions
Arizona constitution, unlike the federal constitution, does not grant power, but instead limits the exercise and scope of legislative authority.
- 7 **Statutes** Powers and duties of legislature in general
Arizona legislature has all the legislative power that state constitution does not prohibit and that the states did not surrender to the federal government.
- 8 **Education** Apportionment and Disbursement
Statutes Submission to legislature; legislative action
In view of Voter Protection Act (VPA), which limited legislature's authority to modify voter initiatives and referenda, Arizona constitution did not preclude voters from enacting by referendum a statutory directive that limited legislature's plenary legislative power by requiring that annual state budgets include adjustments for inflation to base support levels for K-12 public schools. A.R.S. Const. Art. 4, Pt. 1, § 1(1), (6)(B, C), (14), Art. 22, § 14; A.R.S. § 15-901.01.
- 9 **Constitutional Law** Nature and scope in general
Statutes Initiative
Statutes Referendum
The silence of the constitution cannot be construed as an implied prohibition on lawmaking authority of either the legislature or the people.
- 10 **Statutes** Powers and duties of legislature in general
Statutes Power to repeal in general

One legislature generally cannot restrict the lawmaking powers of a future legislature; in other words, one legislature may not enact a statute that irrevocably binds successor legislatures.

- 11 Statutes** Power to amend
Statutes Power to repeal in general
 The legislature may freely repeal or modify previously enacted laws, unless there is some contrary constitutional inhibition.
- 12 Statutes** Submission to legislature; legislative action
Statutes Submission to legislature; legislative action
 When the legislature deviates from a voter-approved law, the constitutional limitations of the Voter Protection Act (VPA) apply and qualify the legislature's otherwise plenary authority. A.R.S. Const. Art. 4, Pt. 1, § 1(6) (B, C), (14).
- 13 Constitutional Law** Intent in general
 Court interprets a constitutional amendment approved by a referendum to effect the intent of the electorate that adopted it. A.R.S. Const. Art. 4, Pt. 1, § 1.
- 14 Statutes** Implied amendment
Statutes By inconsistent or repugnant statute
 Although the finding of an implied repeal or amendment is generally disfavored, it is required when conflicting statutes cannot be harmonized to give each effect and meaning.
- 15 Education** Apportionment and Disbursement
 Annual state budgets that failed to include adjustments for inflation to base support levels for public schools, as directed by a voter-approved referendum, violated the Voter Protection Act. A.R.S. Const. Art. 4, Pt. 1, § 1(6)(B, C), (14); A.R.S. § 15-901.01.
- 16 States** Costs
 School districts that brought successful declaratory judgment action against state regarding legislature's obligations under voter-approved statute to make certain inflation adjustments to base level support for K-12 public schools would be awarded, under private attorney general doctrine, reasonable attorney fees incurred before the Supreme Court on state's petition for review of Court of Appeals decision in districts' favor; funding for public education necessarily benefited a large number of people, legislature might have continued to operate under its erroneous interpretation of state absent private enforcement, and public education funding had continual importance in the state. A.R.S. § 15-901.01.
- 17 Costs** Public interest and substantial benefit doctrine; private attorney general
 "Private attorney general doctrine" permits a court to award attorney fees to a party who has vindicated a right that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance.

Attorneys and Law Firms

*1153 Timothy M. Hogan, Arizona Center for Law in the Public Interest, Phoenix and Donald M. Peters (argued), LaSota & Peters, Phoenix, for Cave Creek Unified School District, Casa Grande Elementary School District, Crane Elementary School District, Palominas Elementary School District, Yuma Union High School District, Arizona Education Association, Arizona School Boards Association, Scott Holcomb, Frank Hunter, and Nancy Putman.

*1154 Thomas C. Horne, Arizona Attorney General, Kathleen P. Sweeney (argued), Assistant Attorney General, Kevin D. Ray, Assistant Attorney General, Jinju Park, Assistant Attorney General, Phoenix, for Doug Ducey and the State of Arizona.

Peter A. Gentala, Pele K. Peacock, Arizona House of Representatives, Phoenix; and Gregory G. Jernigan, Arizona State Senate, Phoenix, for Amicus Curiae Andrew Tobin and Andy Biggs.

Michael T. Liburdi and Michelle M. Carr, Snell & Wilmer, LLP, Phoenix, for Amicus Curiae Arizona Free Enterprise Club.

Opinion

Justice PELANDER, opinion of the Court.

¶ 1 Arizona voters approved a referendum in 2000 that statutorily directed the Arizona Legislature to annually “increase the base level ... of the revenue control limit” for K–12 public school funding. A.R.S. § 15–901.01. The issue here is whether the voters could constitutionally impose this mandate. Finding no constitutional impediment to the electorate’s directive, we further hold that legislative adjustments to § 15–901.01’s funding scheme are limited by the Voter Protection Act (“VPA”), Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14).

I. BACKGROUND

¶ 2 Public elementary and secondary school funding is set by a statutory formula. See A.R.S. §§ 15–941 to –954. One aspect of that formula is the “base level,” a statutorily fixed “dollar amount that is multiplied by a weighted student count and other factors to determine the base support level for each school district.” *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342, 345 ¶ 2 n. 1, 295 P.3d 440, 443 n. 1 (App.2013); see also A.R.S. § 15–901(B)(2) defining “base level”). During the pertinent time, the base support level and the transportation support level were the only two components of the “revenue control limit,” a budget expenditure limit used to calculate the amount of certain state funds provided to school districts. A.R.S. §§ 15–901(A)(12), –947, –971.

¶ 3 In 2000, the legislature approved SB 1007, which proposed a sales tax to increase funding for public schools, community colleges, and universities, as well as other changes to the “financial accountability” requirements of K–12 schools. 2000 Ariz. Sess. Laws, ch. 1 (5th Spec. Sess.). The legislature referred portions of SB 1007 as Proposition 301 for voter approval in the 2000 general election. Approved by the voters, that measure included a requirement that the legislature make annual inflation adjustments to the budget for K–12 public schools:

If approved by the qualified electors voting at a statewide general election, for fiscal years 2001–2002 through 2005–2006, the legislature shall increase the base level or other components of the revenue control limit by two per cent. For fiscal year 2006–2007 and each fiscal year thereafter, the legislature shall increase the base level or other

components of the revenue control limit by a minimum growth rate of either two per cent or the change in the GDP price deflator, as defined in [A.R.S. §] 41–563, from the second preceding calendar year to the calendar year immediately preceding the budget year, whichever is less, except that the base level shall never be reduced below the base level established for fiscal year 2001–2002.

Id. § 11. That provision is codified as A.R.S. § 15–901.01.

¶ 4 From 2001 to 2010, the legislature adjusted the base level and transportation support level annually for inflation. The 2010–11 budget (HB 2008), however, included an adjustment only to the transportation support level. 2010 Ariz. Sess. Laws, ch. 8, § 2 (7th Spec. Sess.). The 2011–12 and 2012–13 budgets likewise did not include base level adjustments.

¶ 5 Several school districts and other parties (collectively, “Cave Creek”) sued the State Treasurer and the State of Arizona (collectively, “the State”), alleging that HB 2008 amended or repealed a voter-approved law, violating the VPA. Cave Creek sought a declaratory judgment that Proposition 301 now § 15–901.01 requires the legislature to annually adjust all components of the revenue control limit for inflation. Ruling that Proposition 301 was “not self-executing,” that § 15–901.01 was “precatory, not mandatory,” *¶1155* and that “the voters cannot require the legislature to enact a law that provides for [the] appropriation” prescribed in the statute, the superior court dismissed Cave Creek’s amended complaint for failing to state a claim.

¶ 6 The court of appeals reversed and remanded the case for entry of a declaratory judgment in favor of Cave Creek.¹ *Cave Creek*, 231 Ariz. at 353 ¶ 37, 295 P.3d at 451. The court held that § 15–901.01 “requires the legislature to provide for annual inflationary increases in each component of the revenue control limit, including the base level.” *Id.* at 345 ¶ 1, 295 P.3d at 443. Because the statute was enacted through a voter referendum, the court further concluded, it “is subject to the provisions of the VPA,” *id.* at 348 ¶ 10, 295 P.3d at 446, and “[a]bsent an amendment or repeal of § 15–901.01 by the voters, the legislature is bound by the VPA to give full effect to the statute’s requirements,” *id.* at 353 ¶ 32, 295 P.3d at 451. The court, however, did not expressly determine whether “[HB] 2008 violates the VPA,” instead remarking that the legislature “would risk violating the VPA” if it failed to adjust the base level for inflation in future fiscal years. *Id.* at 352 ¶ 31, 295 P.3d at 450.

¶ 7 We granted the State’s petition for review to determine whether the voters could constitutionally direct the legislature to annually increase the base level education funding component, and, if so, whether the legislature could disregard that statutory directive without violating the VPA. Both are legal questions of statewide importance. We have jurisdiction under Article 6, Section 5(3) of the Arizona Constitution and A.R.S. § 12–120.24.²

II. DISCUSSION

¶ 8 The legislature and electorate “share lawmaking power under Arizona’s system of government.” *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 7, 212 P.3d 805, 807 (2009). Through the initiative and referendum processes, “the people reserve[d] the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature.” Ariz. Const. art. 4, pt. 1, § 1(1); *see also id.* § 1(2)-(3) (defining the initiative and referendum powers).

¶ 9 “The Voter Protection Act, added to the Arizona Constitution by voters in 1998, limits the legislature’s authority” to modify voter initiatives and referenda. *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 6, 212 P.3d at 807. Before the VPA’s adoption, the

legislature could repeal or modify a voter-approved law passed by less than a majority of all registered voters. *Id.* ¶ 7; *see Adams v. Bolin*, 74 Ariz. 269, 284–85, 247 P.2d 617, 627–28 (1952) (interpreting former Article 4, Section 1(6) of the Arizona Constitution). The VPA, however, imposes heightened constitutional restrictions. Now the legislature cannot repeal “an initiative [or referendum] measure approved by a majority of the votes cast thereon.” Ariz. Const. art. 4, pt. 1, § 1(6)(B). Nor may it amend or supersede a voter-approved law unless the proposed legislation “furthers the purposes” of the initiative or referendum measure and is approved by a three-fourths vote in the House of Representatives and Senate. Ariz. Const. art. 4, pt. 1, § 1(6)(C), (14).

A.

¶ 10 The legislature drafted and referred Proposition 301 to the voters for approval in 1999. Nonetheless, the State argues that the resulting directive in § 15–901.01 for annual education funding adjustments is unconstitutional or otherwise unenforceable.

¶ 11 A party challenging a statute generally has the burden of establishing that it is unconstitutional. *State v. Tocco*, 156 Ariz. 116, 119, 750 P.2d 874, 877 (1988). When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, we presume the statute is constitutional and will uphold it unless it clearly is not. *See id.* We likewise presume that, in drafting and referring Proposition 301 for voter approval, the legislature acted “with full knowledge of relevant constitutional provisions,” including the VPA. *Roylston v. Pima County*, 106 Ariz. 249, 250, 475 P.2d 233, 234 (1970).

¶ 12 The State argues that, “absent a constitutional provision that authorizes them to do so, the voters cannot restrict the Legislature’s otherwise plenary discretion by ordering it by statute to exercise its discretion in a particular manner.” Relying on pre-VPA Arizona case law, the State contends that only a constitutional provision can limit the legislature’s plenary authority, *see Home Accident Ins. Co. v. Indus. Comm’n*, 34 Ariz. 201, 208, 269 P. 501, 503 (1928), and therefore the voters could not, by statute, limit prospective legislative discretion. And, the State further asserts, neither the VPA nor any other constitutional provision “authorizes the voters to give the Legislature statutory commands.”

¶ 13 We reject the State’s argument because its premise is flawed, it is based solely on pre-VPA case law, and it fails to give meaning to the VPA. Our state constitution, unlike the federal constitution, does not grant power, but instead limits the exercise and scope of legislative authority. *Earhart v. Frohmler*, 65 Ariz. 221, 224, 178 P.2d 436, 437–38 (1947) noting that “the whole power not prohibited by the state and Federal constitutions is retained in the people and their elected representatives”; *see also* Ariz. Const. art. 2, § 33 (“The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.”). As the State acknowledges, “the Legislature has all the legislative power that our Constitution does not prohibit and that the states did not surrender to the federal government.” *See Home Accident Ins. Co.*, 34 Ariz. at 208, 269 P. at 503. Accordingly, our case law has consistently acknowledged that “we do not look to the constitution to determine whether the legislature is authorized to [act].” *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 520 ¶ 12, 1 P.3d 706, 710 (2000).

¶ 14 These same principles apply to the people’s lawmaking power. Thus, contrary to the State’s assertion, the validity of § 15–901.01 does not hinge on whether the VPA or any other constitutional provision “empowers the voters to restrict the Legislature’s plenary legislative discretion by ordering it by statute to make a specific

appropriation or enactment.” Rather, the relevant question is whether the Arizona Constitution precludes the voters from enacting the statutory directive.

9 ¶ 15 The State does not cite any state or federal constitutional provision that restricts the voters' authority as the State posits. “[T]he silence of the constitution” cannot “be construed as an implied prohibition” on lawmaking authority of either the legislature or the people. *Cox v. Superior Court*, 73 Ariz. 93, 97, 237 P.2d 820, 822 (1951). Significantly, the State agrees that the legislature could have constitutionally enacted § 15-901.01 through its own lawmaking powers.³ It follows that the people also could constitutionally *1157 enact that statute. See *Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) (“The legislative power of the people is as great as that of the legislature.”); cf. Ariz. Const. art. 22, § 14 (“Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative.”).

10 11 ¶ 16 Still, the State correctly asserts that one legislature generally cannot restrict the lawmaking powers of a future legislature. See *Higgins' Estate v. Hubbs*, 31 Ariz. 252, 264, 252 P. 515, 519 (1926 recognizing that “an attempt by one [l]egislature to limit or bind the acts of a future one” is unconstitutional); accord *Wash. State Farm Bureau Fedn. v. Gregoire*, 162 Wash.2d 284, 174 P.3d 1142, 1150 (2007) (“Implicit in the plenary power of [a] legislature is the principle that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power.”). In other words, one legislature may not enact a statute that irrevocably binds successor legislatures. See *Higgins' Estate*, 31 Ariz. at 264, 252 P. at 519. The legislature may freely repeal or modify previously enacted laws, “unless there is some [contrary] constitutional inhibition.” *Id.*

¶ 17 Thus, had the legislature itself enacted § 15-901.01 in 2000 rather than referring the proposition to the voters, subsequent legislatures could repeal, amend, or otherwise adjust that statute's funding scheme. Extrapolating from that principle, the State argues that the electorate, through a voter-approved statute, likewise cannot bind future legislatures. But having chosen to refer the measure to the people, who then passed it, the legislature is subject to the restrictions of the VPA, which fundamentally “altered the balance of power between the electorate and the legislature.” *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

¶ 18 We find unpersuasive the State's argument that, despite the VPA, only a constitutional provision, rather than a statutory directive such as § 15-901.01, may limit the legislature's plenary legislative power. The VPA expressly limits the legislature's powers relating to a “referendum measure” approved by a majority of votes cast thereon. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14). Thus, the VPA's requirements and restrictions do not differentiate between voter-approved statutes and constitutional provisions. And, contrary to the State's assertion, the Arizona voters in 2000 did “enact [] in the exercise of *their* legislative discretion” a VPA-protected measure, albeit codified in a statute.

12 ¶ 19 In light of the VPA, we also are not persuaded that the voters' directive in § 15-901.01 impermissibly limited the legislature's plenary powers. Without question, the hallmark of lawmaking is “discretionary, policymaking decision[s] ... hav[ing] prospective implications.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55-56, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998); see also *Giss v. Jordan*, 82 Ariz. 152, 159, 309 P.2d 779, 784 (1957) (“The questions of the wisdom, justice, policy or expediency of a statute are for the legislature alone.”). And unless constitutionally restrained, the legislature's plenary authority includes the discretion “to consider any subject within the scope of government,” *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 342 ¶ 5, 982 P.2d 815, 817 (1999), including decisions on how state funds are prioritized and spent, see *Crane*

v. *Frohmler*, 45 Ariz. 490, 496–97, 45 P.2d 955, 958–59 (1935); cf. Ariz. Const. art. 4, pt. 2, § 20 (appropriation bills); *id.* art. 9, § 5 (“No money shall be paid out of the State treasury, except in the manner provided by law.”). But when, as here, the legislature deviates from a voter-approved law, the VPA’s constitutional limitations apply and qualify the legislature’s otherwise plenary authority. *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

¶ 20 With respect to voter-approved laws such as § 15–901.01, the VPA restricts the legislature’s power to repeal, amend, or supersede the measure. *Id.*: see Ariz. Const. art. 4, pt. 1, § 1(6)(B)–(C), (14). We therefore next address whether the legislature’s failure to adjust all components of the revenue control limit for inflation each year violates the VPA.

B.

13 ¶ 21 We interpret a constitutional amendment such as the VPA to effect “the *1158 intent of the electorate that adopted it.” *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994). “We do so by fairly interpreting the language used and, unless the context suggests otherwise, giving words ‘their natural, obvious and ordinary meaning.’” *Rumery v. Baier*, 231 Ariz. 275, 278 ¶ 15, 294 P.3d 113, 116 (2013) (quoting *State ex rel. Morrison v. Nabours*, 79 Ariz. 240, 245, 286 P.2d 752, 755 (1955)).

¶ 22 The State does not dispute that Proposition 301 was a “referendum measure” within the meaning of Article 4, Part 1, Section 1(3) of the Arizona Constitution. *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488, 821 P.2d 146, 149 (1991) (describing the two types of referendum measures recognized in the Arizona Constitution, one of which “permits the legislature to refer a legislative enactment to a popular vote”). Nor does the State argue that HB 2008 was authorized under the VPA because it furthered Proposition 301’s purposes and received a three-fourths vote in both houses. The issue then is whether the legislature’s deviation from § 15–901.01’s funding mandate, by increasing only the transportation support level in HB 2008, impermissibly repeals, amends, or supersedes the statute in violation of the VPA.

¶ 23 Section 15–901.01 directed the legislature to “increase the base level ... of the revenue control limit” annually for inflation.⁴ Although HB 2008 did not expressly state that it repealed, amended, or otherwise changed that directive, cf. *State Land Dept. v. Tucson Rock Sand Co.*, 107 Ariz. 74, 77, 481 P.2d 867, 870 (1971) (a statute expressly repeals another when it “nam [cs] ... those [provisions] to be superseded”), we must consider its effect on the fundamental purposes underlying the VPA. See *Caldwell v. Bd. of Regents*, 54 Ariz. 404, 410, 96 P.2d 401, 403 (1939) (“[T]he legislature may not do indirectly what it is prohibited from doing directly.”). The intent of the VPA, construed from its text and structure, was to limit changes to voter-approved laws, including referendum measures. See *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

14 ¶ 24 The VPA itself does not define the words “repeal,” “amend,” or “supersede” in Article 4, Part 1, Section 1 of the Arizona Constitution. But we have recognized that a statute can be implicitly repealed or amended by another through “repugnancy” or “inconsistency.” *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 29, 26 P.3d 510, 516 (2001) (implied repeal); *Ariz. State Tax Comm’n v. Reiser*, 109 Ariz. 473, 479, 512 P.2d 16, 22 (1973) (implied amendment); accord 1A Sutherland Statutory Construction § 22:13 (7th ed. 2012) (“An implied amendment is an act which purports to be independent, but which in substance alters, modifies, or adds to a prior act.”). Although the finding of an implied repeal or amendment is generally disfavored, it is required when conflicting statutes cannot be harmonized to give each effect and meaning. See *UNUM Life*, 200 Ariz. at 333 ¶¶ 28–29, 26 P.3d at 516; *Reiser*, 109 Ariz.

at 479, 512 P.2d at 22. These legal standards are no less applicable when a budget enactment such as HB 2008 inharmoniously modifies a related, voter-approved law.

15 ¶ 25 The State conceded during oral argument before this Court that HB 2008 violated the VPA by effectively repealing, amending, or superseding § 15-901.01, assuming that statute is constitutional. *See* Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14). Having concluded that the voters could constitutionally direct the legislature to make education funding adjustments, we agree with that concession. As a matter of law and common sense, HB 2008 and the base level provision in § 15-901.01 cannot be harmonized. *See UNUM Life*, 200 Ariz. at 333 ¶¶ 28-29, 26 P.3d at 516 (finding an implied repeal when two related statutes governing life insurance policy proceeds could not be harmonized to “giv[e] [each] force and meaning”). Because HB 2008 did not include the full inflation adjustment that § 15-901.01 required, *1159 it violated the VPA's express limitations on legislative changes to voter-approved laws.⁵

C.

16 17 ¶ 26 Cave Creek requests an award of attorneys' fees under the private attorney general doctrine, which permits a court “to award [attorneys'] fees to a party who has vindicated a right that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance.” *Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989). After considering those factors, the court of appeals concluded that an award of reasonable attorneys' fees to Cave Creek was appropriate because the litigation's outcome “affects funding for Arizona's public education, [which] necessarily benefits a large number of people”; “absent private enforcement, the legislature may have continued to operate under its erroneous interpretation of § 15-901.01”; and “public education [funding] ... has continual importance in this state.” *Cave Creek*, 231 Ariz. at 353 ¶¶ 35-36, 295 P.3d at 451. The State has not challenged the court of appeals' analysis or fee award. We therefore likewise grant Cave Creek's request for reasonable attorneys' fees incurred in the proceedings before this Court.

III. CONCLUSION

¶ 27 We affirm the court of appeals' opinion and remand the case to the superior court for entry of a declaratory judgment in favor of Cave Creek and further proceedings consistent with this opinion.

Justice PELANDER authored the opinion of the Court, in which Chief Justice BERCH, VICE Chief Justice BALES, JUSTICE BRUTINEL, and Justice TIMMER joined.

Parallel Citations

308 P.3d 1152, 297 Ed. Law Rep. 538, 670 Ariz. Adv. Rep. 31

Footnotes

- 1 The superior court also denied Cave Creek's request for injunctive and mandamus relief. The court of appeals did not address those rulings because they were not raised on appeal. *Cave Creek*, 231 Ariz. at 346 ¶ 5 n. 4, 295 P.3d at 444 n. 4. Those issues likewise are not before us.
- 2 Amicus curiae Arizona Free Enterprise Club urges us to dismiss the case as moot because the legislature “has since funded both components of A.R.S. § 15-901.01” in fiscal year 2013-14. We decline to do so. Even if the legislature fully funded both components in the current fiscal year, a point not conceded by Cave Creek, that does not moot Cave Creek's

claims regarding prior or future years' funding levels. In addition, the parties themselves have not raised a mootness issue, and "amicus curiae are not permitted to create, extend, or enlarge the issues [before us]." *City of Tempe v. Prudential Ins. Co.*, 109 Ariz. 429, 432, 510 P.2d 745, 748 (1973).

3 The State also acknowledges that had the voters approved a measure like § 15-901.01 that automatically adjusted the education funding components without requiring any implementing legislative action, such self-executing adjustments would be valid and the legislature would have to include them in the annual budget. Like the court of appeals, however, we do not address the parties' arguments on whether § 15-901.01 is itself an appropriation or otherwise protected by the VPA as a measure that "created or allocated [funds] to a specific purpose" within the meaning of Article 4, Part 1, Section 1(6)(D) of the Arizona Constitution. *See Cave Creek*, 231 Ariz. at 348 ¶ 11 n. 6, 295 P.3d at 446 n. 6. The State's petition for review did not raise, nor did we grant review on, that issue.

4 The court of appeals held that the disjunctive phrase "base level or other components of the revenue control limit" in § 15-901.01 does not authorize the legislature to fund only one component of the revenue control limit without also annually increasing the base level. *See Cave Creek*, 231 Ariz. at 352 ¶ 29, 295 P.3d at 450; *accord* Op. Ariz. Att'y Gen. I01-020, at *9. We do not address that issue, however, as the State did not seek review of it.

5 Our analysis and conclusion are consistent with a 2001 Attorney General advisory opinion that addressed the issue before us. Op. Ariz. Att'y Gen. I01-020, at *3 (concluding that Proposition 301 is a referendum measure protected from legislative changes by the VPA).

.....
End of Document © 2014 Thomson Reuters. No claim to original U.S. Government Works.

[Preferences](#) [My Contacts](#) [Offers](#) [Getting Started](#) [Help](#) [Live Chat](#) [Sign Off](#)

WestlawNext. © 2014 Thomson Reuters [Privacy Statement](#) [Accessibility](#) [Contact Us](#) 1-800-REF-ATTY (1-800-733-2689) [Improve WestlawNext](#)

ATTACHMENT B

DECLARATION OF CHARLES ESSIGS

Background, Qualifications and Nature of Analysis

1. My name is Charles Essigs. I am currently the Director of Government Relations for the Arizona Association of School Business Officials (AASBO).

2. I spent eighteen years as Assistant Superintendent for Business Services for the Mesa Unified School District. I also served as Director of School Finance for the Arizona Department of Education for five years. I am well acquainted with the statutes that control education funding. I was involved in drafting the formula that governs maintenance and operations funding for school districts. I have spoken and testified before the Legislature on the subject of school finance on many occasions. My resume is attached as exhibit A.

What the Base Level Should Have Been in Recent Years

3. For purposes of this case, I was asked to calculate what the base level would have been in fiscal years 2009-10 through 2013-14 if the Legislature had consistently made the adjustments required by A.R.S. § 15-901.01. Because the statute sets out a mathematical formula for making the adjustment, that calculation is a simple one. A.R.S. § 15-901.01 says the adjustment should be either two percent or the change in the GDP price deflator, whichever is less. I determined which of those figures applied for the years in question. In the following table, the second column shows what the base level actually was. The third column shows the appropriate inflation adjustment. The fourth column shows what the base level would have been if that adjustment had been made each year.

Year	Legislative base level	Inflation	What base level should have been
FY 2008-09	\$3,291.42 ¹	n/a	n/a/
FY 2009-10	\$3,267.72	2.0%	\$3,357.25
FY 2010-11	\$3,267.72	1.2%	\$3,397.54
FY 2011-12	\$3,267.72	0.9%	\$3,428.11
FY 2012-13	\$3,267.72	2.0%	\$3,496.68
FY 2013-14	\$3,326.54	1.8%	\$3,559.62

¹ This is the original base level set by the Legislature for 2008-09.

4. After I made my calculations, I obtained a copy of a request made by a legislator to the Joint Legislative Budget Committee to have the same analysis performed, as well as JLBC's response. JLBC reached the same conclusions I did. A copy of the materials regarding JLBC's calculations is attached as exhibit B.

5. If the Court decides that inflation adjustments for 2015 and beyond should be made from what the base level would have been if adjustments had been made each year, then the adjustment for 2015 should use the figure of \$3,559.62, based on my calculations and those of JLBC.

*Effect of Past Failures to Adjust the Base Level
on Future Funding For Education*

6. If the base for future inflation adjustments is not corrected, the effects of past underfunding will in effect be compounded with each passing year. The difference between what school districts will receive, depending upon whether the actual or adjusted base level for 2014 is the starting point for future calculations, will grow larger each year.

7. To demonstrate this effect, I have also calculated what the difference in education funding would be for fiscal years 2015-2030 depending upon whether or not the court deems past adjustments to have been made. For purposes of that calculation, I have assumed that the inflation adjustment for each year will be 1.6 percent. I chose that figure because it is an average of what the correct adjustment has been for the past few years. I have also assumed that student enrollment and assessed valuation for school districts remain constant. Holding student enrollment and assessed valuation constant is an attempt to isolate the impact of inflation. On those assumptions, the calculation is as follows. The column on the far right shows that the difference in the amount of funding will keep growing each year.

Year	Legislative Base Level	Inflation	Adjusted Base Level	Base Level Difference	Funding Impact
FY2015	\$3,379.76	1.60%	\$3,616.57	\$236.81	\$330,128,145.47
FY2016	\$3,433.84	1.60%	\$3,674.44	\$240.60	\$335,410,195.80
FY2017	\$3,488.78	1.60%	\$3,733.23	\$244.44	\$340,776,758.93
FY2018	\$3,544.60	1.60%	\$3,792.96	\$248.36	\$346,229,187.08
FY2019	\$3,601.32	1.60%	\$3,853.65	\$252.33	\$351,768,854.07
FY2020	\$3,658.94	1.60%	\$3,915.30	\$256.37	\$357,397,155.73
FY2021	\$3,717.48	1.60%	\$3,977.95	\$260.47	\$363,115,510.23
FY2022	\$3,776.96	1.60%	\$4,041.60	\$264.64	\$368,925,358.39
FY2023	\$3,837.39	1.60%	\$4,106.26	\$268.87	\$374,828,164.12
FY2024	\$3,898.79	1.60%	\$4,171.96	\$273.17	\$380,825,414.75

FY2025	\$3,961.17	1.60%	\$4,238.71	\$277.54	\$386,918,621.39
FY2026	\$4,024.55	1.60%	\$4,306.53	\$281.98	\$393,109,319.33
FY2027	\$4,088.94	1.60%	\$4,375.44	\$286.50	\$399,399,068.44
FY2028	\$4,154.37	1.60%	\$4,445.44	\$291.08	\$405,789,453.53
FY2029	\$4,220.83	1.60%	\$4,516.57	\$295.74	\$412,282,084.79
FY2030	\$4,288.37	1.60%	\$4,588.84	\$300.47	\$418,878,598.15

Disbursements to School Districts That Have Not Been Made

8. The Department of Education sometimes errs in calculating how much money should be disbursed to a school district, and it has to make a correction. It is not difficult for the Department to make such a correction. If the court were to decide that the money that should have been distributed to school districts in past years should be distributed now, it could simply require the Department to correct the budget limit calculations and the calculation and disbursement of state aid to school districts for fiscal years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, to the extent the previous budget capacity calculations and state aid disbursements were not consistent with the base-level figures that should have been in effect.

9. The funding that is calculated with reference to the base limit is called maintenance and operations funding. Such funding is ordinarily used to pay salaries and operating expenses of a school district. It can also be used, however, for capital expenditures, such as building repairs and the acquisition of computers.

10. In my position with Arizona Association of School Business Officials, I deal with the business managers of many of Arizona's school districts. As a result, I am familiar with the general level of financial need in those districts. I have read the declaration of Kevin Kelty that is being submitted in this case. In my experience, the extent of the needs of the Casa Grande District, which Mr. Kelty recounts, are fairly typical of the needs of Arizona's other school districts. The details obviously vary from district to district, but most districts have been unable in recent years to meet many of their capital needs.

11. According to information contained in the Superintendent of Public Instruction's annual reports, school district spending on capital projects in Arizona declined from fiscal year 2008 to 2012 by almost \$1 billion. In FY 2008, total school district spending on capital projects was \$1.7 billion, but it declined to less than \$800 million dollars in fiscal year 2012.

12. Based on this data, capital spending by school districts decreased by over 50 percent from fiscal year 2008 to fiscal year 2012. Most of the spending decline can be attributed to the recession and reduced state funding during that period of time. Every significant source of funding for capital projects declined over that period of time. State formula funding alone was reduced by around \$600 million during that period. Bond funds generated by local school district taxpayers were reduced by over \$300 million.

13. Although a reduction in enrollment growth reduced the need for new schools during this period, school districts' other capital needs were largely not affected by the recession. Buildings, facilities and equipment still needed to be maintained and improved. It is reasonable to conclude that school districts' current capital needs match the \$1.7 billion that was spent in 2008. Those needs likely exceed that amount because the reduced funding in the years since 2008 more than offsets any reduction in the amount needed for new schools.

14. State funding for capital needs has not been restored. For example, the School Facilities Board had estimated that \$260 million would be needed in fiscal year 2014 to fund the building renewal formula that annually allocates funds to school districts to maintain school facilities. However, in 2013 the legislature repealed the formula and appropriated only \$17 million to the School Facilities Board to distribute as application based building renewal grants to school districts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date: January 16, 2014
Charles Essigs
Charles Essigs

Exhibit A

CHUCK ESSIGS

PUBLICATIONS AND TECHNICAL REPORTS

School Finance, In Boardmanship: A Guide for Governing Members, Arizona School Boards Association, Inc., 1994-2012

Public School and Community School Finance in Arizona, Arizona Legislature, November, 1979.

Special Education in Arizona, Joint Select Committee of the Arizona Legislature, October, 1975.

Planning for the Funding of Special Education, General-Special Education Administrative Conference, UCEA Western Region, May, 1975.

Video Tape Technology in Clinical Supervision of the Improvement of Special Education Instruction, National Council for Exceptional Children Convention, Los Angeles, April, 1975.

Special Education - Planning for Programs, Tucson: Bureau of School Services, University of Arizona, January, 1975.

Alternative Special Education Administrative Operations, In Program Alternatives for Special Services, E.S.E.A. Title III, 1974.

The Place of Clinical Supervision in Teacher Evaluation, Phi Delta Kappa Workshop, Tucson, November, 1974.

Funding Charter Schools, Arizona School Boards Journal, Arizona School Boards Association, Inc., 1995.

Funding Charter Schools in Arizona, School Business Affairs, Association of School Business Affairs International, 1997.

Is the 65% Solution the Solution?, School Business Affairs, Association of School Business Affairs International, February, 2006.

MISCELLANEOUS

Member, Joint Legislative Committee on Funding Priorities for Arizona School Districts

Member, Joint Legislative Committee on Goals for Arizona's Educational Excellence

Director, Arizona Principals' Academy III - July 1984, Northern Arizona University, Flagstaff, Arizona

Consultant, Development of Application Procedures for P.L. 94-142, National Association of Directors of Special Education, Washington, D.C.

Consultant, Development of a Management System for the Pierre Indian School, National Indian Training and Research Center, Tempe, Arizona

Past Member, Governor's Council on Developmental Disabilities

Past Member, Arizona Council for the Deaf

Board of Directors, The Arizona Partnership, 1990

Research Staff, Governor's Finance and Equalization Subcommittee, 1991

Past President, Arizona Association of School Business Officials

Past Member, Mesa Chamber of Commerce Education Committee

Past Member, Mesa Chamber of Commerce Legislative Committee

Board of Directors, Northeast Shea Property Owners Association, 1992

1992 Good Government Award, Arizona Tax Research Association and 2009 Circle of Influence Award from the Arizona Association of County School Superintendents

Past Member, Board of Directors, Arizona State Retirement System, 1995-2004

Past President, Arizona State Board for School Capital Facilities, 1998

Past Member, Board of Directors, Mesa Chamber of Commerce

Past Member, Board of Directors, Arizona Town Hall

Past Member, Governor's School Readiness Board

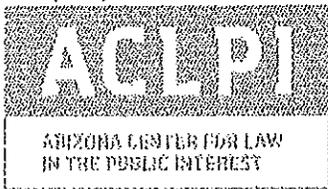
Past Board Member, Maricopa County Regional School District

Exhibit B

Don Peters

From: Tim Hogan [thogan@aclpi.org]
Sent: Tuesday, January 07, 2014 2:33 PM
To: Don Peters
Subject: FW: Inflation

Tim Hogan
Executive Director
Arizona Center for Law in the Public Interest
202 E. McDowell Rd., Suite 153
Phoenix, AZ 85004
Tel: (602)258-8850



From: Victoria Steele [<mailto:victoriasteelaz@gmail.com>]
Sent: Tuesday, January 07, 2014 2:15 PM
To: Tim Hogan
Subject: Inflation

Hi Tim,
In the interest of time, I've simply copied the response from JLBC for you.
Hope this is helpful.
Thanks
Victoria

Rep Steele,

See the response from JLBC staff below

The Arizona Supreme Court recently held in *Cave Creek Unified School District v. Ducey* that the legislature is required to make adjustments to the base level each year pursuant to A.R.S. § 15-901.01. When the case is sent back to superior court, the plaintiffs will reportedly argue that the adjustment to the base level for fiscal year 2015 should be made from what the base level would currently be if adjustments had been made each year pursuant to A.R.S. § 15-901.01, rather than from what the figure actually is at this time. The plaintiffs may also argue that the additional funds that would have been distributed to school districts in fiscal years 2010-2014 if the base level had been adjusted each year should now be distributed.

These claims could have a significant impact on the State's budget. My questions are:

1. What would the base level have been in fiscal years 2010-2014 if it had been adjusted each year pursuant to A.R.S. § 15-901.01, and if each year's adjustment had been based on the previous year's adjusted figure?

2. If the State were now required to distribute the additional funds that would have had to be distributed in those years if the base level had been adjusted,
3. What would the amount for each year be?

From: Steve Schimpp
Sent: Wednesday, December 18, 2013 4:03 PM
To: Eric Figueroa
Subject: Inflation Questions

Eric,

Please see below for answers to your recent questions on K-12 inflation:

Question 1: What would the K-12 "base level" have been in recent years if always adjusted for inflation?

ANSWER: please see attached chart

Question 2: How much more would Basic State Aid have cost in FY14 if the base level had always been inflated?

ANSWER: About \$320 million

Question 3: How much state funding was "foregone" in each recent year and cumulatively because of foregone inflation adjustments?

ANSWERS (estimated):

- FY09 = \$119.2 M
- FY10 = \$119.7 M
- FY11 = \$179.6 M
- FY12 = \$220.8 M
- FY13 = \$310.3 M
- FY14 = \$313.4 M
- (For example, in FY14 the base level is \$3,327 but would have been \$3,560. If funded at \$3,560, K-12 spending would have been \$313 M higher in FY14)
- Cumulatively = \$1,263.0 M
- (Cumulative total equals \$119.2 M for FY09 + \$119.7 M for FY10 + \$179.6 M for FY11 + \$220.8 M for FY12 + \$310.3 M for FY13 + \$313.4 M for FY14 = \$1,263 M).

Please let me know if you have questions.

Steve

Steve Schimpp
JLBC Staff
1716 West Adams
Phoenix Arizona 85007
602/926 5491
Victoria Steele
State Representative LD9 Tucson
Capitol: 602-926-0683
Cell: 520-401-0935

K-12 Per Pupil "Base Level" (FY06 - FY15 est)
 JLBC Staff
 12/11/2013

Fiscal Year	Actual		If Always Inflated		\$ Difference
	Base Level	% Change	Base Level	% Change	
2006	3,001.00	3.2%	NA	NA	NA
2007	3,133.53	4.4%	NA	NA	NA
2008	3,226.88	3.0%	NA	NA	NA
2009 ^{1/}	3,203.65	-0.7%	3,291.42	2.0%	87.77
2010	3,267.72	2.0%	3,357.25	2.0%	89.53
2011	3,267.72	0.0%	3,397.54	1.2%	129.82
2012	3,267.72	0.0%	3,428.11	0.9%	160.39
2013	3,267.72	0.0%	3,496.68	2.0%	228.96
2014	3,326.54	1.8%	3,559.62	1.8%	233.08
2015 est	3,373.11	1.4%	3,609.45	1.4%	236.34

^{1/} Original FY09 budget set base level at \$3,291.42, but mid-year cuts caused "effective" base level to be \$3,203.65.

ATTACHMENT C

DECLARATION OF KEVIN KELTY

1. My name is Kevin Kelty. I am the Administrative Services Manager for Casa Grande Elementary School District No. 4 of Pinal County, Arizona. In that capacity, I have administrative responsibility for the finances of the District.

2. Approximately 7,000 students are enrolled in our District. I have been told that if the inflation funding that was not disbursed to school districts for several years were now to be disbursed, each elementary school district would receive roughly \$705 per pupil. I understand that figure to be an estimate only. If that estimate is accurate, our District would receive approximately \$4.9 million.

3. Our District's unmet financial needs are roughly twice that amount, due to the reduction of funding for public schools in recent years.

4. One of our District's biggest needs is to adopt new curriculum for use in our classrooms. We haven't been able to do so for years. New curriculum is needed for several reasons.

5. One reason is that curricular materials, such as textbooks, wear out and require replacement. As the curriculum ages, textbook publishers quit producing the textbooks and the supplements to those textbooks. That can make it impossible for us to replace worn out materials. As a result, sometimes students have to share textbooks, teachers have to share teacher's editions of the textbooks, and teachers and students have little or no access to supplementary materials.

6. Another reason why new curriculum is often needed is that education professionals develop more effective instructional practices. These innovations cannot usually be applied to existing curricular materials. We cannot take advantage of the innovations without updating the curriculum. For example, most of our curriculum does not have a digital component. It is hard for parents and students to understand why they cannot access their textbooks on-line. This was not an option when the textbooks we are currently using were adopted. In fact, the elementary-school reading curriculum we are using came with audio books on cassette tapes.

7. Still another reason why curriculum may need to be updated is that the Legislature sometimes directs school districts to change the focus of their instruction. For example, the State of Arizona updated its mathematics standards in 2008. We were unable to update our curricular materials reflect those changes, and that puts our students at a disadvantage.

8. Finally, curriculum may become outdated or irrelevant. For example, social-studies curriculum in our middle schools has not been updated since 2001. The last president listed in our textbooks is Clinton. The September 11, 2001, attack on the World Trade Center is not mentioned, nor is there any mention of the war in Iraq. Since our textbooks are not connected to digital resources, we are unable to update this curriculum.

9. Adopting new curriculum is expensive because of the need to pay for textbooks and textbook supplements. We haven't had the money to make the needed changes. We estimate that about \$900,000 is needed to revise the elementary-school reading curriculum, \$142,000 to revise the elementary school writing curriculum, \$500,000 to revise the middle-school mathematics curriculum and \$1.1 million to update the social studies curriculum. All told, about \$3 million is needed to bring our District's curriculum up to date.

10. District established guidelines related to safety and efficiency, as well as transportation industry standards, indicate that we should replace school buses when they have been used for fifteen years. Seven of our buses should be replaced according to this criteria, at a cost of about \$150,000 each. We do not have the money to replace those buses, so they continue to be used, notwithstanding the District's recommended guidelines related to replacement. We also need two new buses for special-education students. Those buses would also cost about \$150,000 each. We have not acquired those buses because we don't have the money.

11. Our District also has extensive needs for new technology. Some of the oldest computers being used in our school computer labs and throughout the district are between six and ten years old. They are very much out of date. It is estimated that \$1 million to \$2 million is needed to acquire new computers, servers and other related technology such as printers, copiers, and infrastructure needs for wireless computing, as well as devices to use within the wireless network, such as I-pads, laptops, etc. No significant upgrades have been possible due to the lack of funding.

12. It is estimated that \$4 million is needed for the repair and renovation of school facilities. The needs include HVAC systems that have exceed their useful life, roofing replacements, crumbling asphalt, carpeting and flooring that is failing (some of it dates back as far as 1994) and door hardware that doesn't work. No significant upgrades have been possible due to lack of funding.

13. Our District has vehicles that are used for maintenance staff and providing transportation services to special-education students. About \$200,000 of needed vehicle replacements have not been made due to lack of funds.

14. The unmet needs I have identified in this declaration total roughly \$10 million. If we were now to receive the money that was not disbursed in prior years, we could take care of only about half of these needs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this date: January 13, 2014

Kevin Kelty
Kevin Kelty

ATTACHMENT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Donald M. Peters 005929
LASOTA & PETERS, PLC
3030 N. Third Street, Suite 905
Phoenix, AZ 85012
Telephone: (602) 248-2900
dpeters@lasotapeters.com

Timothy M. Hogan 004567
ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST
202 E. McDowell, Suite 153
Phoenix, AZ 85004-4533
Telephone: (602) 258-8850
thogan@aclpi.org

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CAVE CREEK UNIFIED SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

vs.

DOUG DUCEY, in his capacity as State
Treasurer and STATE OF ARIZONA,

Defendants.

No. CV2010-017113

JUDGMENT ON MANDATE

(Assigned to the Honorable Katherine
Cooper)

On January 13, 2014, the Arizona Supreme Court issued its mandate to this
Court, reversing this Court's order dismissing Plaintiffs' claims, awarding
attorneys' fees and expenses to Plaintiffs and remanding the action to this Court.

1 Now, in accordance with the Opinion and Mandate of the Arizona Supreme
2 Court, it is hereby

3 1. ORDERED, ADJUDGED AND DECREED that this Court's Order
4 of March 3, 2011, dismissing Plaintiffs' claims is hereby vacated.

5 2. IT IS FURTHER ORDERED that all components of the Revenue
6 Control Limit, as defined in A.R.S. § 15-947(A), must be adjusted each year
7 pursuant to A.R.S. § 15-901.01.

8 3. IT IS FURTHER ORDERED that the base levels for the following
9 fiscal years were required to be, and are deemed for all purposes to have been and
10 to be, in the amounts shown:
11

12 Fiscal year 2009-2010: \$3,357.25

13 Fiscal year 2010-2011: \$3,397.54

14 Fiscal year 2011-2012: \$3,428.11

15 Fiscal year 2012-2013: \$3,496.68

16 Fiscal year 2013-2014: \$3,559.62

17
18 In particular, in making the inflation adjustment required by A.R.S. § 15-
19 901.01 for fiscal year 2014-2015, the Legislature is required to treat the base level
20 for 2013-2014 as having been \$3,559.62.
21

22 4. IT IS FURTHER ORDERED that the calculation and disbursement
23 of state aid to school districts for fiscal years 2009-2010, 2010-2011, 2011-2012,
24

1 2012-2013 and 2013-2014 shall be corrected to the extent the previous calculations
2 and disbursements were not consistent with the base-level figures set forth in this
3 judgment. Such adjustments shall be made in equal annual installments over a
4 period of five years, commencing in fiscal year 2014-2015.

5 5. IT IS FURTHER ORDERED that the Revenue Control Limit for all
6 school districts for fiscal years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and
7 2013-2014 shall be corrected to the extent the Revenue Control Limit for those
8 years was not calculated in accordance with the base-level figures set forth in this
9 judgment.
10

11 6. IT IS FURTHER ORDERED that the bond in the amount of \$100.00
12 posted by Plaintiffs on or about October 13, 2010, pursuant to A.R.S. § 35-213(B),
13 is hereby exonerated. The Clerk of the Court is directed to return that sum to
14 Plaintiffs' counsel.
15

16 7. IT IS FURTHER ORDERED that the bond for costs on appeal in the
17 amount of \$500.00 posted by Plaintiffs on March 11, 2011, is hereby exonerated.
18 The Clerk of the Court is directed to return that sum to Plaintiffs' counsel.
19

20 8. IT IS FURTHER ORDERED that Plaintiffs have judgment against
21 Defendant State of Arizona for attorneys' fees and costs in the total amount of
22 \$_____. Interest shall accrue on any amount that remains unpaid at the rate of
23 _____ percent per annum from the date of this judgment until paid.
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

9. IT IS FURTHER ORDERED dismissing any and all unadjudicated claims.

The Court further expressly finds and determines that there is no just reason for delay and therefore expressly directs that this Judgment be entered at this time as a final judgment.

DATED this _____ day of _____, 2013.

Judge of the Superior Court

1 Donald M. Peters 005929
2 LASOTA & PETERS, PLC
3 3030 North Third Street, Suite 905
4 Phoenix, Arizona 85012
5 Telephone: (602) 248-2900
6 dpeters@lasotapeters.com

7 Timothy M. Hogan 004567
8 ARIZONA CENTER FOR LAW IN THE
9 PUBLIC INTEREST
10 202 E. McDowell, Suite 153
11 Phoenix, Arizona 85004-4533
12 Telephone: (602) 258-8850
13 thogan@aclpi.org

14 Attorneys for Plaintiffs

15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CAVE CREEK UNIFIED SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

vs.

DOUG DUCEY in his capacity as State
Treasurer and STATE OF ARIZONA,

Defendants.

No. CV2010-017113

**REQUEST FOR EXPEDITED
SCHEDULING CONFERENCE**

(Assigned to the Honorable Katherine
Cooper)

On January 13, 2014, the Arizona Supreme Court issued its mandate in this case and remanded the case to Superior Court.

This case concerns the scope of Legislature's obligations to adjust funding for education by virtue of Proposition 301, enacted in the year 2000. The terms of

1 the judgment in this case will directly and materially affect the State's budget for
2 fiscal year 2014-2015. The Legislature is now in session. It is important to resolve
3 the remaining issues in this case as promptly as possible so that the Legislature can
4 know what the law requires as it makes its budgetary decisions for the next fiscal
5 year.

6
7 With this request, Plaintiffs are submitting a legal memorandum that
8 explains their position on the remaining issues in this case. Plaintiffs are also
9 submitting two declarations. Barring surprises, Plaintiffs do not expect to offer any
10 additional evidence or arguments.

11 Plaintiffs do not expect any disputes of fact in this case. In light of the
12 complexities of education funding and the significance of the issues, however, the
13 Court might find that it would benefit from explanations of some of the arcane
14 matters at issue in a brief hearing. Both plaintiffs and the State have access to
15 experts in education finance who could help explain any points that the Court may
16 find unclear.
17

18 At a scheduling conference, the parties and this Court could ascertain what
19 kind of schedule would be practical for getting the remaining issues resolved
20 expeditiously.
21

22

23

24

25

26

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

January 21, 2014.

/s/ Donald M. Peters

Donald M. Peters
LaSota & Peters, PLC
3030 North Third Street, Suite 905
Phoenix, Arizona 85012
Telephone: (602) 248-2900

Timothy M. Hogan
Arizona Center for Law
In the Public Interest
202 E. McDowell, Suite 153
Phoenix, Arizona 85004-4533
Telephone: (602) 258-8850

Attorneys for Plaintiffs

COPY hand-delivered this 21st
day of January, 2014, to:

The Honorable Katherine Cooper
Maricopa County Superior Court
101 West Jefferson
Phoenix, Arizona 85003-2243

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COPY mailed this 21st day of
January, 2014, to:

Kevin D. Ray
Jinju Park
Office of the Attorney General
State of Arizona
1275 West Washington Street
Phoenix, Arizona 85007-2926

Peter A. Gentala
Office of the Speaker
Arizona House of Representatives
1700 West Washington Street, Suite H
Phoenix, Arizona 85007-2844

Gregrey G. Jernigan
Office of the President
Arizona State Senate
1700 West Washington Street, Suite S
Phoenix, Arizona 85007-2844

/s/ Toni Vanchieri _____

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

**CAVE CREEK UNIFIED SCHOOL DISTRICT; CASA GRANDE
ELEMENTARY SCHOOL DISTRICT; CRANE ELEMENTARY SCHOOL
DISTRICT; PALOMINAS ELEMENTARY SCHOOL DISTRICT;
YUMA UNION HIGH SCHOOL DISTRICT; ARIZONA EDUCATION
ASSOCIATION; ARIZONA SCHOOL BOARDS ASSOCIATION;
SCOTT HOLCOMB; FRANK HUNTER; AND NANCY PUTMAN,**
Plaintiffs/Appellants,

v.

**DOUG DUCEY, IN HIS CAPACITY AS STATE TREASURER;
AND STATE OF ARIZONA,**
Defendants/Appellees.

No. CV-13-0039-PR
Filed September 26, 2013

Appeal from the Superior Court in Maricopa County
The Honorable J. Kenneth Mangum, Judge (Ret.)
No. CV2010-017113

REVERSED AND REMANDED

Opinion of the Court of Appeals, Division One
231 Ariz. 342, 295 P.3d 440 (2013)

AFFIRMED

COUNSEL:

Timothy M. Hogan, Arizona Center for Law in the Public Interest, Phoenix and Donald M. Peters (argued), LaSota & Peters, Phoenix, for Cave Creek Unified School District, Casa Grande Elementary School District, Crane Elementary School District, Palominas Elementary School District, Yuma Union High School District, Arizona Education Association, Arizona School Boards Association, Scott Holcomb, Frank Hunter, and Nancy Putman

Thomas C. Horne, Arizona Attorney General, Kathleen P. Sweeney (argued), Assistant Attorney General, Kevin D. Ray, Assistant Attorney

CAVE CREEK V. DUCEY
Opinion of the Court

General, Jinju Park, Assistant Attorney General, Phoenix, for Doug Ducey and the State of Arizona

Peter A. Gentala, Pele K. Peacock, Arizona House of Representatives, Phoenix; and Gregory G. Jernigan, Arizona State Senate, Phoenix, for Amicus Curiae Andrew Tobin and Andy Biggs

Michael T. Liburdi and Michelle M. Carr, Snell & Wilmer, LLP, Phoenix, for Amicus Curiae Arizona Free Enterprise Club

JUSTICE PELANDER authored the opinion of the Court, in which CHIEF JUSTICE BERCH, VICE CHIEF JUSTICE BALES, JUSTICE BRUTINEL, and JUSTICE TIMMER joined.

JUSTICE PELANDER, opinion of the Court:

¶1 Arizona voters approved a referendum in 2000 that statutorily directed the Arizona Legislature to annually “increase the base level . . . of the revenue control limit” for K-12 public school funding. A.R.S. § 15-901.01. The issue here is whether the voters could constitutionally impose this mandate. Finding no constitutional impediment to the electorate’s directive, we further hold that legislative adjustments to § 15-901.01’s funding scheme are limited by the Voter Protection Act (“VPA”), Ariz. Const. art. 4, pt. 1, § 1(6)(B)–(C), (14).

I. BACKGROUND

¶2 Public elementary and secondary school funding is set by a statutory formula. *See* A.R.S. §§ 15-941 to -954. One aspect of that formula is the “base level,” a statutorily fixed “dollar amount that is multiplied by a weighted student count and other factors to determine the base support level for each school district.” *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342, 345 ¶ 2 n.1, 295 P.3d 440, 443 n.1 (App. 2013); *see also* A.R.S. § 15-901(B)(2) (defining “base level”). During the pertinent time, the base support level and the transportation support level were the only two components of the “revenue control limit,” a budget expenditure limit used to calculate the amount of certain state funds provided to school districts. A.R.S. §§ 15-901(A)(12), -947, -971.

CAVE CREEK V. DUCEY
Opinion of the Court

¶3 In 2000, the legislature approved SB 1007, which proposed a sales tax to increase funding for public schools, community colleges, and universities, as well as other changes to the “financial accountability” requirements of K-12 schools. 2000 Ariz. Sess. Laws, ch. 1 (5th Spec. Sess.). The legislature referred portions of SB 1007 as Proposition 301 for voter approval in the 2000 general election. Approved by the voters, that measure included a requirement that the legislature make annual inflation adjustments to the budget for K-12 public schools:

If approved by the qualified electors voting at a statewide general election, for fiscal years 2001-2002 through 2005-2006, the legislature shall increase the base level or other components of the revenue control limit by two per cent. For fiscal year 2006-2007 and each fiscal year thereafter, the legislature shall increase the base level or other components of the revenue control limit by a minimum growth rate of either two per cent or the change in the GDP price deflator, as defined in [A.R.S. §] 41-563, from the second preceding calendar year to the calendar year immediately preceding the budget year, whichever is less, except that the base level shall never be reduced below the base level established for fiscal year 2001-2002.

Id. § 11. That provision is codified as A.R.S. § 15-901.01.

¶4 From 2001 to 2010, the legislature adjusted the base level and transportation support level annually for inflation. The 2010-11 budget (HB 2008), however, included an adjustment only to the transportation support level. 2010 Ariz. Sess. Laws, ch. 8, § 2 (7th Spec. Sess.). The 2011-12 and 2012-13 budgets likewise did not include base level adjustments.

¶5 Several school districts and other parties (collectively, “Cave Creek”) sued the State Treasurer and the State of Arizona (collectively, “the State”), alleging that HB 2008 amended or repealed a voter-approved law, violating the VPA. Cave Creek sought a declaratory judgment that Proposition 301 (now § 15-901.01) requires the legislature to annually adjust all components of the revenue control limit for inflation. Ruling that Proposition 301 was “not self executing,” that § 15-901.01 was “precatory, not mandatory,” and that “the voters cannot require the legislature to enact a law that provides for [the] appropriation” prescribed

CAVE CREEK V. DUCEY
Opinion of the Court

in the statute, the superior court dismissed Cave Creek's amended complaint for failing to state a claim.

¶6 The court of appeals reversed and remanded the case for entry of a declaratory judgment in favor of Cave Creek.¹ *Cave Creek*, 231 Ariz. at 353 ¶ 37, 295 P.3d at 451. The court held that § 15-901.01 "requires the legislature to provide for annual inflationary increases in each component of the revenue control limit, including the base level." *Id.* at 345 ¶ 1, 295 P.3d at 443. Because the statute was enacted through a voter referendum, the court further concluded, it "is subject to the provisions of the VPA," *id.* at 348 ¶ 10, 295 P.3d at 446, and "[a]bsent an amendment or repeal of § 15-901.01 by the voters, the legislature is bound by the VPA to give full effect to the statute's requirements," *id.* at 353 ¶ 32, 295 P.3d at 451. The court, however, did not expressly determine whether "[HB] 2008 violates the VPA," instead remarking that the legislature "would risk violating the VPA" if it failed to adjust the base level for inflation in future fiscal years. *Id.* at 352 ¶ 31, 295 P.3d at 450.

¶7 We granted the State's petition for review to determine whether the voters could constitutionally direct the legislature to annually increase the base level education funding component, and, if so, whether the legislature could disregard that statutory directive without violating the VPA. Both are legal questions of statewide importance. We have jurisdiction under Article 6, Section 5(3) of the Arizona Constitution and A.R.S. § 12-120.24.²

¹ The superior court also denied Cave Creek's request for injunctive and mandamus relief. The court of appeals did not address those rulings because they were not raised on appeal. *Cave Creek*, 231 Ariz. at 346 ¶ 5 n.4, 295 P.3d at 444 n.4. Those issues likewise are not before us.

² Amicus curiae Arizona Free Enterprise Club urges us to dismiss the case as moot because the legislature "has since funded both components of A.R.S. § 15-901.01" in fiscal year 2013-14. We decline to do so. Even if the legislature fully funded both components in the current fiscal year, a point not conceded by Cave Creek, that does not moot Cave Creek's claims regarding prior or future years' funding levels. In addition, the parties themselves have not raised a mootness issue, and "amicus curiae are not permitted to create, extend, or enlarge the issues [before us]." *City of Tempe v. Prudential Ins. Co.*, 109 Ariz. 429, 432, 510 P.2d 745, 748 (1973).

CAVE CREEK V. DUCEY
Opinion of the Court

II. DISCUSSION

¶8 The legislature and electorate “share lawmaking power under Arizona’s system of government.” *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469 ¶ 7, 212 P.3d 805, 807 (2009). Through the initiative and referendum processes, “the people reserve[d] the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature.” *Ariz. Const. art. 4, pt. 1, § 1(1)*; *see also id.* § 1(2)–(3) (defining the initiative and referendum powers).

¶9 “The Voter Protection Act, added to the Arizona Constitution by voters in 1998, limits the legislature’s authority” to modify voter initiatives and referenda. *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 6, 212 P.3d at 807. Before the VPA’s adoption, the legislature could repeal or modify a voter-approved law passed by less than a majority of all registered voters. *Id.* ¶ 7; *see Adams v. Bolin*, 74 Ariz. 269, 284–85, 247 P.2d 617, 627–28 (1952) (interpreting former Article 4, Section 1(6) of the Arizona Constitution). The VPA, however, imposes heightened constitutional restrictions. Now the legislature cannot repeal “an initiative [or referendum] measure approved by a majority of the votes cast thereon.” *Ariz. Const. art. 4, pt. 1, § 1(6)(B)*. Nor may it amend or supersede a voter-approved law unless the proposed legislation “furthers the purposes” of the initiative or referendum measure and is approved by a three-fourths vote in the House of Representatives and Senate. *Ariz. Const. art. 4, pt. 1, § 1(6)(C)*, (14).

A.

¶10 The legislature drafted and referred Proposition 301 to the voters for approval in 2000. Nonetheless, the State argues that the resulting directive in § 15-901.01 for annual education funding adjustments is unconstitutional or otherwise unenforceable.

¶11 A party challenging a statute generally has the burden of establishing that it is unconstitutional. *State v. Tocco*, 156 Ariz. 116, 119, 750 P.2d 874, 877 (1988). When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, we presume the statute is constitutional and will uphold it

CAVE CREEK V. DUCEY
Opinion of the Court

unless it clearly is not. *See id.* We likewise presume that, in drafting and referring Proposition 301 for voter approval, the legislature acted “with full knowledge of relevant constitutional provisions,” including the VPA. *Royston v. Pima County*, 106 Ariz. 249, 250, 475 P.2d 233, 234 (1970).

¶12 The State argues that, “absent a constitutional provision that authorizes them to do so, the voters cannot restrict the Legislature’s otherwise plenary discretion by ordering it by statute to exercise its discretion in a particular manner.” Relying on pre-VPA Arizona case law, the State contends that only a constitutional provision can limit the legislature’s plenary authority, *see Home Accident Ins. Co. v. Indus. Comm’n*, 34 Ariz. 201, 208, 269 P. 501, 503 (1928), and therefore the voters could not, by statute, limit prospective legislative discretion. And, the State further asserts, neither the VPA nor any other constitutional provision “authorizes the voters to give the Legislature statutory commands.”

¶13 We reject the State’s argument because its premise is flawed, it is based solely on pre-VPA case law, and it fails to give meaning to the VPA. Our state constitution, unlike the federal constitution, does not grant power, but instead limits the exercise and scope of legislative authority. *Earhart v. Frohmler*, 65 Ariz. 221, 224, 178 P.2d 436, 437–38 (1947) (noting that “the whole power not prohibited by the state and Federal constitutions is retained in the people and their elected representatives”); *see also* Ariz. Const. art. 2, § 33 (“The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.”). As the State acknowledges, “the Legislature has all the legislative power that our Constitution does not prohibit and that the states did not surrender to the federal government.” *See Home Accident Ins. Co.*, 34 Ariz. at 208, 269 P. at 503. Accordingly, our case law has consistently acknowledged that “we do not look to the constitution to determine whether the legislature is authorized to [act].” *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 520 ¶ 12, 1 P.3d 706, 710 (2000).

¶14 These same principles apply to the people’s lawmaking power. Thus, contrary to the State’s assertion, the validity of § 15-901.01 does not hinge on whether the VPA or any other constitutional provision “empowers the voters to restrict the Legislature’s plenary legislative discretion by ordering it by statute to make a specific appropriation or enactment.” Rather, the relevant question is whether the Arizona Constitution precludes the voters from enacting the statutory directive.

CAVE CREEK V. DUCEY
Opinion of the Court

¶15 The State does not cite any state or federal constitutional provision that restricts the voters' authority as the State posits. "[T]he silence of the constitution" cannot "be construed as an implied prohibition" on lawmaking authority of either the legislature or the people. *Cox v. Superior Court*, 73 Ariz. 93, 97, 237 P.2d 820, 822 (1951). Significantly, the State agrees that the legislature could have constitutionally enacted § 15-901.01 through its own lawmaking powers.³ It follows that the people also could constitutionally enact that statute. *See Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) ("The legislative power of the people is as great as that of the legislature."); *cf.* Ariz. Const. art. 22, § 14 ("Any law which may be enacted by the Legislature under this Constitution may be enacted by the people under the Initiative.").

¶16 Still, the State correctly asserts that one legislature generally cannot restrict the lawmaking powers of a future legislature. *See Higgins' Estate v. Hubbs*, 31 Ariz. 252, 264, 252 P. 515, 519 (1926) (recognizing that "an attempt by one [l]egislature to limit or bind the acts of a future one" is unconstitutional); *accord Wash. State Farm Bureau Fed'n v. Gregoire*, 174 P.3d 1142, 1150 (Wash. 2007) ("Implicit in the plenary power of [a] legislature is the principle that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power."). In other words, one legislature may not enact a statute that irrevocably binds successor legislatures. *See Higgins' Estate*, 31 Ariz. at 264, 252 P. at 519. The legislature may freely repeal or modify previously enacted laws, "unless there is some [contrary] constitutional inhibition." *Id.*

³ The State also acknowledges that had the voters approved a measure like § 15-901.01 that automatically adjusted the education funding components without requiring any implementing legislative action, such self-executing adjustments would be valid and the legislature would have to include them in the annual budget. Like the court of appeals, however, we do not address the parties' arguments on whether § 15-901.01 is itself an appropriation or otherwise protected by the VPA as a measure that "created or allocated [funds] to a specific purpose" within the meaning of Article 4, Part 1, Section 1(6)(D) of the Arizona Constitution. *See Cave Creek*, 231 Ariz. at 348 ¶ 11 n.6, 295 P.3d at 446 n.6. The State's petition for review did not raise, nor did we grant review on, that issue.

CAVE CREEK V. DUCEY
Opinion of the Court

¶17 Thus, had the legislature itself enacted § 15-901.01 in 2000 rather than referring the proposition to the voters, subsequent legislatures could repeal, amend, or otherwise adjust that statute's funding scheme. Extrapolating from that principle, the State argues that the electorate, through a voter-approved statute, likewise cannot bind future legislatures. But having chosen to refer the measure to the people, who then passed it, the legislature is subject to the restrictions of the VPA, which fundamentally "altered the balance of power between the electorate and the legislature." *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

¶18 We find unpersuasive the State's argument that, despite the VPA, only a constitutional provision, rather than a statutory directive such as § 15-901.01, may limit the legislature's plenary legislative power. The VPA expressly limits the legislature's powers relating to a "referendum measure" approved by a majority of votes cast thereon. Ariz. Const. art. 4, pt. 1, § 1(6)(B)–(C), (14). Thus, the VPA's requirements and restrictions do not differentiate between voter-approved statutes and constitutional provisions. And, contrary to the State's assertion, the Arizona voters in 2000 did "enact[] in the exercise of *their* legislative discretion" a VPA-protected measure, albeit codified in a statute.

¶19 In light of the VPA, we also are not persuaded that the voters' directive in § 15-901.01 impermissibly limited the legislature's plenary powers. Without question, the hallmark of lawmaking is "discretionary, policymaking decision[s] . . . hav[ing] prospective implications." *Bogan v. Scott-Harris*, 523 U.S. 44, 55–56 (1998); *see also Giss v. Jordan*, 82 Ariz. 152, 159, 309 P.2d 779, 784 (1957) ("The questions of the wisdom, justice, policy or expediency of a statute are for the legislature alone."). And unless constitutionally restrained, the legislature's plenary authority includes the discretion "to consider any subject within the scope of government," *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 342 ¶ 5, 982 P.2d 815, 817 (1999), including decisions on how state funds are prioritized and spent, *see Crane v. Frohmiller*, 45 Ariz. 490, 496–97, 45 P.2d 955, 958–59 (1935); *cf.* Ariz. Const. art. 4, pt. 2, § 20 (appropriation bills); *id.* art. 9, § 5 ("No money shall be paid out of the State treasury, except in the manner provided by law."). But when, as here, the legislature deviates from a voter-approved law, the VPA's constitutional limitations apply and qualify the legislature's otherwise plenary authority. *Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

CAVE CREEK V. DUCEY
Opinion of the Court

¶20 With respect to voter-approved laws such as § 15-901.01, the VPA restricts the legislature’s power to repeal, amend, or supersede the measure. *Id.*; see Ariz. Const. art. 4, pt. 1, § 1(6)(B)–(C), (14). We therefore next address whether the legislature’s failure to adjust all components of the revenue control limit for inflation each year violates the VPA.

B.

¶21 We interpret a constitutional amendment such as the VPA to effect “the intent of the electorate that adopted it.” *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994). “We do so by fairly interpreting the language used and, unless the context suggests otherwise, giving words ‘their natural, obvious and ordinary meaning.’” *Rumery v. Baier*, 231 Ariz. 275, 278 ¶ 15, 294 P.3d 113, 116 (2013) (quoting *State ex rel. Morrison v. Nabours*, 79 Ariz. 240, 245, 286 P.2d 752, 755 (1955)).

¶22 The State does not dispute that Proposition 301 was a “referendum measure” within the meaning of Article 4, Part 1, Section 1(3) of the Arizona Constitution. *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488, 821 P.2d 146, 149 (1991) (describing the two types of referendum measures recognized in the Arizona Constitution, one of which “permits the legislature to refer a legislative enactment to a popular vote”). Nor does the State argue that HB 2008 was authorized under the VPA because it furthered Proposition 301’s purposes and received a three-fourths vote in both houses. The issue then is whether the legislature’s deviation from § 15-901.01’s funding mandate, by increasing only the transportation support level in HB 2008, impermissibly repeals, amends, or supersedes the statute in violation of the VPA.

¶23 Section 15-901.01 directed the legislature to “increase the base level...of the revenue control limit” annually for inflation.⁴

⁴ The court of appeals held that the disjunctive phrase “base level or other components of the revenue control limit” in § 15-901.01 does not authorize the legislature to fund only one component of the revenue control limit without also annually increasing the base level. See *Cave Creek*, 231 Ariz. at 352 ¶ 29, 295 P.3d at 450; accord Op. Ariz. Att’y Gen. I01-020, at *9. We do not address that issue, however, as the State did not seek review of it.

CAVE CREEK V. DUCEY
Opinion of the Court

Although HB 2008 did not expressly state that it repealed, amended, or otherwise changed that directive, *cf. State Land Dep't v. Tucson Rock & Sand Co.*, 107 Ariz. 74, 77, 481 P.2d 867, 870 (1971) (a statute expressly repeals another when it “nam[es] . . . those [provisions] to be superseded”), we must consider its effect on the fundamental purposes underlying the VPA. *See Caldwell v. Bd. of Regents*, 54 Ariz. 404, 410, 96 P.2d 401, 403 (1939) (“[T]he legislature may not do indirectly what it is prohibited from doing directly.”). The intent of the VPA, construed from its text and structure, was to limit changes to voter-approved laws, including referendum measures. *See Ariz. Early Childhood*, 221 Ariz. at 469 ¶ 7, 212 P.3d at 807.

¶24 The VPA itself does not define the words “repeal,” “amend,” or “supersede” in Article 4, Part 1, Section 1 of the Arizona Constitution. But we have recognized that a statute can be implicitly repealed or amended by another through “repugnancy” or “inconsistency.” *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 29, 26 P.3d 510, 516 (2001) (implied repeal); *Ariz. State Tax Comm’n v. Reiser*, 109 Ariz. 473, 479, 512 P.2d 16, 22 (1973) (implied amendment); *accord* 1A Sutherland Statutory Construction § 22:13 (7th ed. 2012) (“An implied amendment is an act which purports to be independent, but which in substance alters, modifies, or adds to a prior act.”). Although the finding of an implied repeal or amendment is generally disfavored, it is required when conflicting statutes cannot be harmonized to give each effect and meaning. *See UNUM Life*, 200 Ariz. at 333 ¶¶ 28–29, 26 P.3d at 516; *Reiser*, 109 Ariz. at 479, 512 P.2d at 22. These legal standards are no less applicable when a budget enactment such as HB 2008 inharmoniously modifies a related, voter-approved law.

¶25 The State conceded during oral argument before this Court that HB 2008 violated the VPA by effectively repealing, amending, or superseding § 15-901.01, assuming that statute is constitutional. *See Ariz. Const. art. 4, pt. 1, § 1(6)(B)–(C), (14)*. Having concluded that the voters could constitutionally direct the legislature to make education funding adjustments, we agree with that concession. As a matter of law and common sense, HB 2008 and the base level provision in § 15-901.01 cannot be harmonized. *See UNUM Life*, 200 Ariz. at 333 ¶¶ 28–29, 26 P.3d at 516 (finding an implied repeal when two related statutes governing life insurance policy proceeds could not be harmonized to “giv[e] [each] force and meaning”). Because HB 2008 did not include the full inflation

CAVE CREEK V. DUCEY
Opinion of the Court

adjustment that § 15-901.01 required, it violated the VPA's express limitations on legislative changes to voter-approved laws.⁵

C.

¶26 Cave Creek requests an award of attorneys' fees under the private attorney general doctrine, which permits a court "to award [attorneys'] fees to a party who has vindicated a right that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." *Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989). After considering those factors, the court of appeals concluded that an award of reasonable attorneys' fees to Cave Creek was appropriate because the litigation's outcome "affects funding for Arizona's public education, [which] necessarily benefits a large number of people"; "absent private enforcement, the legislature may have continued to operate under its erroneous interpretation of § 15-901.01"; and "public education [funding] . . . has continual importance in this state." *Cave Creek*, 231 Ariz. at 353 ¶¶ 35–36, 295 P.3d at 451. The State has not challenged the court of appeals' analysis or fee award. We therefore likewise grant Cave Creek's request for reasonable attorneys' fees incurred in the proceedings before this Court.

III. CONCLUSION

¶27 We affirm the court of appeals' opinion and remand the case to the superior court for entry of a declaratory judgment in favor of Cave Creek and further proceedings consistent with this opinion.

⁵ Our analysis and conclusion are consistent with a 2001 Attorney General advisory opinion that addressed the issue before us. Op. Ariz. Att'y Gen. I01-020, at *3 (concluding that Proposition 301 is a referendum measure protected from legislative changes by the VPA).