ARIZONA COURT OF APPEALS

DIVISION TWO

ROBERT MARC STAMPER, et al.,

Plaintiffs/Appellants,

v.

CITY OF SCOTTSDALE, et al.,

Defendants/Appellees.

Court of Appeals
Division Two
No. 2 CA-CV 2025-0449

Maricopa County
Superior court
No. CV2025-018956

ANSWERING BRIEF OF DEFENDANTS/APPELLEES CITY OF SCOTTSDALE AND ARIZONA DEPARTMENT OF REVENUE

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INTRODUCTION

This is a case about a tax that the Scottsdale City Council asked voters to enact and the voters decisively approved. In November 2024, Scottsdale voters approved Proposition 490, a 0.15% transaction privilege tax ("TPT") to fund parks, recreational facilities, and the McDowell Sonoran Preserve. The measure passed with 58.25% of the vote—a clear majority under article 6, § 9 of the City Charter, which governs voter approval of TPT increases. Six months later, Plaintiffs sued, claiming Prop. 490 needed 60% approval under article 4, part 1, § 1(5) of the Arizona Constitution.

The superior court correctly dismissed Plaintiffs' claims on two independent grounds. First, Plaintiffs failed to exhaust administrative remedies. Arizona has a comprehensive, mandatory process for challenging the legality of a tax: file a refund claim with the Department, and if the dispute is not satisfactorily resolved at the administrative level, proceed to appeal to the Board of Tax Appeals ("BOTA") or the superior court's tax court. Plaintiffs skipped the entire process, so the superior court properly dismissed their case.

Second, the superior court ruled that Prop. 490 was not a referendum, so the 60% threshold in Section 1(5) does not apply. The Council placed Prop.

490 on the ballot under article 6, § 9 of the City Charter and A.R.S. § 42-6006, not under the referendum power. The Court may affirm on either ground.

Four additional, independent grounds also support affirming the superior court's dismissal: (1) Plaintiff Marc Stamper lacks standing because the legal incidence of the TPT falls on businesses, not consumers; (2) Plaintiffs' suit is an untimely election contest, or alternatively is barred by laches; (3) Arizona's anti-injunction statutes prohibit the relief Plaintiffs seek; and (4) even if Prop. 490 were a referendum, the 60% requirement applies only to statewide measures, not local measures like Prop. 490.

This Court should affirm.

STATEMENT OF FACTS AND CASE

I. In 2024, the Scottsdale City Council referred a transaction privilege tax increase to voters as Prop. 490.

Scottsdale has long maintained a TPT. In April 2024, the Scottsdale City Council adopted Resolution 13092, "seeking approval of the qualified electors as to whether the City Council shall be authorized to enact a transaction privilege and use tax rate for improvements, maintenance, and protection of city parks and city recreational facilities, and the maintenance and protection of the McDowell Sonoran Preserve." ROA 30 ep 21; ROA 45

ep 2. The Resolution sought voter authorization to add 0.15% to Scottsdale's existing TPT rate beginning on July 1, 2025. ROA 30 ep 21; ROA 45 ep 2. The same day, the Council enacted Ordinance No. 4633, predetermining how the additional revenue would be allocated to improvements to City parks and recreational facilities and maintenance of the McDowell Sonoran Preserve. ROA 30 ep 25.

The Council placed the TPT rate change on the ballot as Proposition 490 via article 6, § 9 of the Scottsdale City Charter, which requires voter approval for a TPT rate exceeding one percent. *Id.* ep 3; ROA 45 ep 5.

II. Scottsdale voters approved Prop. 490 by a majority vote.

On November 5, 2024, Scottsdale voters approved Prop. 490 by 82,032 (58.25%) to 58,788 (41.75%). ROA 30 ep 35. The City canvassed the election on November 22, and the results were recorded with the City Clerk and County Recorder by February 26, 2025. *Id.* ep 30; ROA 45 ep 2. On May 20, 2025, the Council proposed a budget allocating the projected TPT revenue and enacted an ordinance codifying the voter-approved TPT. ROA 30 ep 149, 170-202; ROA 45 ep 2. The TPT took effect July 1, 2025. ROA 45 ep 2.

III. The lawsuit.

On May 30, 2025, six months after the election, Plaintiffs Robert Marc Stamper and Gretchen Jacobs dba AZ Design Group sued the City and the Department, seeking declaratory and injunctive relief precluding implementation and enforcement of the TPT. ROA 1. Plaintiffs alleged the TPT was unlawful because Prop. 490 received less than the 60% approval supposedly required for tax referenda under the article 4, part 1, section 1(5) of the Arizona Constitution ("Section 1(5)") and its enforcement would violate due process. *Id.* ep. 10-11, ¶¶ 42-57.

Defendants opposed the injunction and moved to dismiss. ROA 28; ROA 29; ROA 30; ROA 32.

IV. The superior court dismissed Plaintiffs' claims and denied their request for injunctive relief.

The superior court granted Defendants' motions to dismiss and denied the injunction as moot. ROA 45 ep 6.

The court dismissed on two independent grounds. First, the court found that it lacked jurisdiction because Plaintiffs failed to exhaust administrative remedies. *Id.* ep 3-4. Plaintiffs had an available remedy: they could "bring their claims to ADOR, which would consider the claims and

provide a refund if it determined the claim had merit." *Id.* ep 3. Then, "[i]f Plaintiffs were denied a refund, they could appeal the claim to the State Board of Tax Appeals." *Id.* And "[i]f their administrative appeal was unsuccessful, they could then file an action in Superior court." *Id.* Relying on *Moulton v. Napolitano*, 205 Ariz. 506, 512 (App. 2003), the superior court rejected Plaintiffs' arguments that the "constitutional nature of Plaintiffs' claims" and "the injunctive remedy they seek" allowed them to "sidestep the exhaustion requirement." ROA 45 ep 3.

Second, the court found that even assuming exhaustion was not required, Prop. 490 did not require a 60% vote under Section 1(5) of the Arizona Constitution because it was not a "referendum" under Section 1(8). Section 1(8) defines a municipal referendum as one proposed by "ten percent of the electors." Because Prop. 490 was proposed by the City Council, not by voters, the court concluded that it was not a referendum. ROA 45 ep 5. The court did not reach Defendants' remaining arguments. *Id.* ep 3.

The court entered final judgment on November 19, 2025. ROA 48. Plaintiffs filed a notice of appeal the same day. ROA 49. This Court has jurisdiction under A.R.S. § 12-2101(A)(1).

STANDARD OF REVIEW

"Dismissal of a complaint under Rule 12(b)(6) is reviewed de novo." *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012).

STATEMENT OF THE ISSUES

1. Did Plaintiffs fail to exhaust administrative remedies by suing directly in superior court without first pursuing the statutory refund process through the Department of Revenue?

2. Is Prop. 490, a transaction privilege tax that the Scottsdale City Council placed on the ballot under article 6, § 9 of the City Charter, a "referendum" subject to the 60% supermajority requirement of article 4, part 1, § 1(5) of the Arizona Constitution, where the measure was not proposed by ten percent of the electors and did not seek voter approval or rejection of previously enacted legislation?

3. Does Mr. Stamper lack standing to challenge the transaction privilege tax because he does not bear the legal incidence of the tax?

4. Are Plaintiffs' claims barred as an untimely election contest or by laches because they waited six months to sue?

5. Do Arizona's anti-injunction statutes, A.R.S. §§ 42-11006 and 42-1254(D)(1), bar Plaintiffs from obtaining an injunction against collecting the

transaction privilege tax, where Plaintiffs concede that the election did not involve fraud or misconduct?

6. Does the 60% supermajority requirement of article 4, part 1, § 1(5) apply to local ballot measures such as Prop. 490?

ARGUMENT SUMMARY

I. Exhaustion. Arizona law provides taxpayers a comprehensive administrative path to challenge the legality of a tax: file a refund claim with the Department, and if the dispute is not satisfactorily resolved at the administrative level, then proceed to the BOTA or tax court. Arizona courts require exhaustion in tax cases, even when constitutional questions are raised, so long as the Department can provide some relief. Plaintiffs undisputedly did not exhaust their administrative remedies. Instead, they sued directly in superior court. Because the Department can grant Plaintiffs complete monetary relief, exhaustion was required, and the superior court correctly dismissed Plaintiffs' claims.

II. Not a referendum. Prop. 490 was not a referendum. The Council placed Prop. 490 on the ballot under article 6, § 9 of the City Charter and A.R.S. § 42-6006, which authorize voter approval of TPT rate changes above one percent. A referendum, by contrast, requires 10% of the electors to

submit already-enacted legislation to the voters. Prop. 490 was not initiated by voters, and it did not refer an already-enacted rate change for voter ratification. The proposed rate increase could not lawfully take effect without voter authorization in the first instance. Because Prop. 490 was not a referendum, Section 1(5)'s 60% threshold does not apply.

The Court may also affirm on any of the following four additional grounds.

III. Standing. Mr. Stamper lacks standing because the legal incidence of the TPT falls on businesses, not on consumers. The TPT is a privilege tax imposed on businesses and businesses may choose to pass it on to customers. As a consumer, Mr. Stamper is not the taxpayer and therefore has no standing to challenge the TPT.

IV. Laches. Plaintiffs' suit is, in substance, an election contest. Arizona law allows a party to contest a measure that did not receive enough votes, but that challenge must be filed within five days of the canvas. Plaintiffs sued six months later. Even if Plaintiffs' claims were not barred as an untimely election contest, they would be barred by laches: Plaintiffs knew the basis for challenge on election night, offered no excuse for waiting six

months, and prejudiced the City and the more than 47,000 businesses that updated their systems to collect the new rate.

V. Anti-injunction. Arizona's anti-injunction statutes, A.R.S. §§ 42-11006 and 42-1254(D)(1), also bar the relief Plaintiffs seek. Both statutes prohibit enjoining the collection of any tax. Plaintiffs sought an injunction to prevent the City from implementing the TPT. But that relief cannot be granted.

VI. Statewide-only. The 60% threshold in Section 1(5) reaches only statewide referenda. So even if Prop. 490 were a referendum, Section 1(5) would not apply because Prop. 490 was not a statewide referendum.

The Court should affirm.

ARGUMENT

I. The superior court properly dismissed Plaintiffs' claims for failure to exhaust administrative remedies.

Arizona has a well-established process for challenging the legality of a tax. A taxpayer files a refund claim with the Department, exhausts the Department's administrative process, then proceeds to tax court. Plaintiffs skipped that. They sued directly in superior court without ever presenting

their claims to the Department. The superior court correctly dismissed their claims on that basis, ROA 45 ep 3-4, and this Court should affirm.

A. Arizona law requires taxpayers to exhaust administrative remedies before going to court.

This Court has "unfailingly held that tax matters must be exhausted within ADOR before being brought in superior court." *Moulton*, 205 Ariz. at 512, ¶ 14. If a taxpayer has "statutory recourse to an administrative agency that has authority to grant appropriate remedies," the taxpayer "must scrupulously follow the statutory procedures." *Est. of Bohn v. Waddell*, 174 Ariz. 239, 245-46 (App. 1992). If the taxpayer "fail[s] to fully utilize all their administrative remedies, the superior court lacks jurisdiction to consider their claim." *Id.* This is true "even when raising constitutional questions." *Moulton*, 205 Ariz. at 513, ¶ 20 (quoting *Bohn*, 174 Ariz. at 245); *see also Valley Vendors Corp. v. City of Phoenix*, 126 Ariz. 491, 494 (App. 1980) (dismissing complaint based on failure to exhaust, where the "basic issue to be tried is whether the taxpayer has been illegally taxed[]" and "th[at] issue … could very well include constitutional challenges").

This rule exists for good reason. It gives the agency the chance to "make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Moulton*, 205 Ariz. at 511, ¶ 9.

The legislature created a detailed administrative process specifically for that purpose. Here is how it works:

Step 1: File a claim with the Department. Under A.R.S. § 42-1118(E), a taxpayer who has paid a tax may file a refund claim with the Department. This is the starting point—the taxpayer tells the Department that it believes the tax was illegally imposed and asks for its money back. "If the department determines that any amount of tax, penalty or interest has been paid in excess of the amount actually due, the department shall credit the excess amount against any tax administered, … [r]efund the entire amount of tax," or issue a credit voucher. A.R.S. § 42-1118(A).

Step 2: Petition for a hearing. If the Department determines the tax is due, the taxpayer may petition the Department for "a hearing, correction, or redetermination" of the tax. A.R.S. § 42-1251(A). "The department shall consider the petition and grant a hearing, if requested." *Id.* At this hearing, the taxpayer can present any grounds it wants. There is "no limitation upon the grounds that the taxpayer may present to reduce or correct his

assessment." *Moulton*, 205 Ariz. at 514, ¶ 21 (quoting *Valley Vendors*, 126 Ariz. at 494). That includes constitutional challenges. This Court has held that "the Department of Revenue and the Board of Tax Appeals have authority to consider the constitutionality of a tax statute." *Bohn*, 174 Ariz. at 248. The taxpayer may also bypass this hearing process and appeal directly to the BOTA or file an action in tax court. *See* A.R.S. § 42-1251(B)(1)-(2).

Step 3: Appeal. If the Department denies the claim, the taxpayer has two options. The taxpayer may appeal to the BOTA under A.R.S. § 42-1252 and then proceed to tax court, A.R.S. § 42-1254(A), or the taxpayer may file directly in tax court, A.R.S. § 42-1254(C). Either way, the taxpayer must first exhaust the Department's administrative process before any court review.

The Department's appeal process is not optional. It is the exclusive path for challenging a tax. This Court has "consistently rejected the argument that the administrative process is permissive." *Moulton*, 205 Ariz. at 512, ¶ 14 (citation omitted).

Plaintiffs never took any of these steps. They jumped straight to superior court. The superior court therefore correctly held that "[n]either the constitutional nature of Plaintiffs' claims nor the injunctive remedy they seek allows them to sidestep the exhaustion requirement." ROA 45 ep 3.

B. Plaintiffs' framing of their case does not excuse exhaustion.

Plaintiffs offer (at 15-22) two reasons why they should not have to exhaust administrative remedies. They argue that (1) claims for declaratory and injunctive relief do not require exhaustion; and (2) constitutional rather than tax-based claims do not require exhaustion. This Court has already rejected both arguments.

1. Plaintiffs cannot escape exhaustion by choosing their preferred remedy.

Plaintiffs argue (at 15, 17-19) that the administrative process would serve no purpose here because the Department cannot declare the TPT unconstitutional or issue an injunction. But the question is not whether the Department can grant Plaintiffs' preferred form of relief. The question is whether the Department "has the power to provide some relief." *Moulton*, 205 Ariz. at 514, ¶ 24. It does. The Department can grant a refund of every cent Plaintiffs have paid under the TPT. That is complete monetary relief.

Plaintiffs' reliance (at 18-19) on *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 422, ¶ 18 (2022), does not change this analysis. In *Mills*, an engineer challenged statutes requiring him to register with the Board of Technical Registration. *Id.* at 419-20, ¶ 7. The problem was that the Board

had not initiated formal proceedings against Mills, was not required to do so, and (unlike here) "nothing authorize[d] Mills to affirmatively seek a determination from the Board." *Id.* at 419, ¶ 6. The Court emphasized that "neither the statutes nor the Board's regulations provide a mechanism for Mills to request or require review[.]" *Id.* at 421, ¶ 15. Without any way to get his claims before the agency, Mills was stuck "in legal limbo," so he had no choice but to seek declaratory judgment in the superior court. *Id.* at 421, ¶ 16.

Unlike Mills, Plaintiffs here are not in limbo because Arizona law allows a taxpayer to challenge a tax without waiting for an agency to initiate administrative proceedings. The administrative refund process under §§ 42-1118, 42-1251, 42-1252, and 42-1254 gives the *taxpayers* the right to initiate administrative proceedings—the path Mills did not have.

Plaintiffs cannot avoid the exhaustion requirement by strategically choosing to ask for a declaration or an injunction rather than a refund. As this Court has affirmed, it is "of 'no importance'" that Plaintiffs crafted their pleading to seek "their desired form of declaratory relief," rather than a refund. *Moulton*, 205 Ariz. at 513, ¶ 21 (citation omitted). Plaintiffs' "preference for a particular remedy" does not "determine[] whether the remedy before the agency is adequate." *Id.* (citation omitted). Indeed, a

plaintiff "may not choose its administrative remedy through the framing of its own complaint. If that were possible, the purpose of the exhaustion doctrine would be thwarted." *Id.*

That's exactly what Plaintiffs tried to do here. They styled their Complaint as a request for declaratory and injunctive relief to avoid the administrative process. But the substance of their claim is that the TPT is illegal and they shouldn't have to pay it. That claim can be raised by paying the tax and challenging it before the Department.

2. Plaintiffs' constitutional claims do not exempt them from exhaustion.

Plaintiffs also argue (at 15-20) that because they raise constitutional questions, their claims should not have to go through the Department. But Arizona courts have repeatedly rejected this assertion, and for the same reason each time: the agency's inability to declare a statute facially unconstitutional does not make administrative review futile or pointless. The Department can still apply constitutional doctrines to a taxpayer's specific claim and grant a refund on that basis. *See Bohn*, 174 Ariz. at 249-50.

For example, in *Bohn*, retired federal employees challenged Arizona's income tax scheme as unconstitutional and sought refunds. 174 Ariz. at 242.

They argued that exhaustion was unnecessary because the Department and BOTA lacked authority to declare statutes unconstitutional. *Id.* at 246. This Court disagreed, holding that although the Department cannot declare a statute unconstitutional, it can "appl[y] constitutional doctrines" when resolving taxpayer claims. *Id.* at 249. The Court required exhaustion even though the taxpayers raised purely constitutional claims, concluding that the administrative process would develop the factual record and might even moot the constitutional question entirely. *Id.* at 250-51.

In *Kerr v. Waddell*, 183 Ariz. 1, 8 (App. 1994), this Court confirmed that *Bohn* was "dispositive" and rejected the same arguments Plaintiffs press here: that courts have original jurisdiction over tax cases, that the administrative process is permissive, and that exhaustion is futile because the Department cannot rule on constitutionality.

In *Moulton*, the plaintiffs similarly insisted that their case was "not 'a tax case' but, instead, 'a constitutional case.'" *Moulton*, 205 Ariz. at 512, ¶ 15. The Court held that "[w]hen alleged constitutional violations are 'inextricably intertwined' with government benefits for which administrative remedies exist, the consistent trend in federal and state courts is to uphold the requirement of an exhaustion of remedies." *Id.* at 512, ¶ 16

(quoting *Heckler v. Ringer*, 466 U.S. 602, 614 (1984)). The Court rejected "the Plaintiffs' attempt to circumvent the administrative process by the construction of their complaint." *Id.* at 514, ¶ 22.

Valley Vendors confirms this application to municipal tax challenges. There, a taxpayer challenged a Phoenix tax as "void, illegal and unconstitutional" and sought to enjoin its assessment. 126 Ariz. at 492. The taxpayer argued that Phoenix's administrative hearings were "an improper forum" for its constitutional claims. *Id.* at 494. This Court again affirmed dismissal because the administrative code placed "no limitation upon the grounds that the taxpayer may present to reduce or correct his assessment," and those grounds "can be wide-ranging and could very well include constitutional challenges." *Id.*

Plaintiffs (at 21) try to limit *Valley Vendors* to disputes over the "manner and amounts" of tax assessments—issues they concede fall "within the agency's experience and authority." But the Court's reasoning was broader. When "the basic issue to be tried is whether the taxpayer had been illegally taxed," this Court held that the claim can and should be raised in the administrative process first. *Id.* at 494.

Contrary to Plaintiffs' suggestion (at 20), *Mills* did not "abrogate[]" *Kerr* or *Bohn*. *Mills* does not cite *Kerr* at all, and it cites *Bohn* only approvingly. As for Plaintiffs' specific attack, they assert (at 20) that *Mills* does not require exhaustion "where no expertise or administrative fact-finding is necessary." Not so. *Mills* mentions expertise only in ¶ 11, which addresses the "General principles" of exhaustion. It mentions fact-finding only in connection with standing, not exhaustion. 253 Ariz. at 424, ¶ 27. No aspect of its holding on exhaustion (¶¶ 13-22) relies on either concept.

Nor does *Mills* create a blanket exemption for cases "seeking injunctive relief against unconstitutional laws," as Plaintiffs contend (at 18-20). The Court went out of its way to say the opposite: "[T]he fact that the superior court has original jurisdiction to adjudicate constitutional challenges to statutes does not necessarily relieve litigants of their obligation to exhaust administrative remedies when administrative issues also raise constitutional concerns." *Mills*, 253 Ariz. at 422, ¶ 19. Relying on *Moulton*, the Supreme Court recognized that where "constitutional issues exist that can only be adjudicated by a court but are 'inextricably intertwined' with government benefits for which administrative remedies exist, courts generally require exhaustion of those remedies." *Id.* (quoting *Moulton*, 205 Ariz. at 512, ¶ 16).

Arizona's "mandatory administrative review process" for tax disputes falls squarely into this category. *Moulton*, 205 Ariz. at 513, ¶ 20. Plaintiffs' constitutional challenge cannot be untangled from the tax-administration scheme. Plaintiffs claim (at 18) that they are not seeking a refund, but the substance of their position is that the TPT is illegal and they should not have to pay it. Arizona has prescribed a statutory mechanism for resolving that dispute, which can grant Plaintiffs complete relief, including by "appl[ying] constitutional doctrines to ... refund claims." *Id.* Plaintiffs' challenge thus runs directly through the administrative scheme, not around it.

In short: *Mills* let the engineer bypass the agency because he had no way to initiate agency proceedings on his central question. Plaintiffs do.

Plaintiffs also rely (at 15-16) on two tax court decisions holding that administrative exhaustion is not required when the legality of the tax statute is at issue. *See Barth v. Home Builders Ass'n of Cent. Ariz.*, 2025 WL 3247973, at *2 (Ariz. Tax Ct. Nov. 20, 2025); *Vangilder v. Ariz. Dep't of Revenue*, 2018 WL

11732890, at *1 (Ariz. Tax Ct. Aug. 2, 2018).[1] But standing was not raised by the defendants in *Vangilder*, and *Barth* misconstrues *Bohn*. Neither decision is binding on this Court.

Relying on *Bohn*, Plaintiffs contend (at 19-20, 22) that because their case challenges the "constitutionality of legislation" rather than its "constitutional applicability," exhaustion does not apply. But the distinction Plaintiffs invoke goes to remedial authority—what the Department can and cannot decide—not to whether exhaustion is required.

In *Bohn*, the Court recognized that there is a difference between "constitutional applicability of legislation to particular facts and constitutionality of the legislation." 174 Ariz. at 249 (citation omitted) (emphasis removed). "When a tribunal passes upon constitutional applicability, it is carrying out the legislative intent," whereas "[w]hen a tribunal passes upon constitutionality of the legislation, the question is whether it shall take action which runs counter to the legislative intent." *Id.*

[1] Both the tax court and Court of Appeals mentioned standing sua sponte but declined to reach the issue. *See Vangilder v. Ariz. Dep't of Revenue*, 248 Ariz. 254, 258, ¶ 7 n.3 (App. 2020). And in affirming the tax court's decision, the Supreme Court did not address exhaustion. *See Vangilder v. Ariz. Dep't of Revenue*, 252 Ariz. 481, 493, ¶ 49 (2022).

(citation omitted). From that premise, the Court concluded that agencies have "the power to determine constitutional applicability" but not the "constitutionality of legislation." *Id.* (citation omitted). Only courts have that power. *Id.*

That distinction, however, did not excuse exhaustion in *Bohn* itself. *Id.* at 249-50. The plaintiffs there argued that Arizona's differential taxation of federal versus state pensions was unconstitutional on its face. *Id.* at 250. Every application of the tax scheme was unconstitutional in the exact same way, yet the *Bohn* Court required exhaustion anyway. *See id.*

Bohn's distinction between constitutionality and constitutional applicability answers a different question than the one presented here: it defines what an agency may ultimately *decide*, not which cases require exhaustion. An agency cannot declare a statute facially unconstitutional. But it can apply constitutional principles to the taxpayers before it and grant a refund on that basis. What it cannot do is enter a declaration that prevents the tax from being collected at all. In the tax context, exhaustion has never turned on whether the agency can grant the ultimate declaratory remedy. The legislature and courts have routinely required exhaustion even when taxpayers raise constitutional challenges. *Mills* and *Bohn* do not change this.

Finally, Plaintiffs contend (at 17-18) that exhaustion would be "wasteful and futile." The exhaustion doctrine affords an administrative agency the opportunity to "perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Moulton*, 205 Ariz. at 511, ¶ 9 (citation omitted). Plaintiffs argue (at 15-17) that none of these purposes would be served because this case involves the constitutionality of a tax.

But exhaustion in tax cases does not depend on any one of these rationales being at full strength. Arizona courts treat exhaustion as a bedrock requirement for challenges to taxes. That rule does not bend case-by-case based on a taxpayer's assessment of how much the administrative process would add. It applies across the board to tax disputes without exception because the administrative process reliably does at least one of the things that exhaustion exists to accomplish. Here, it can resolve Plaintiffs' claim with a full refund.

Plaintiffs speculate (at 17-18) that the Department would deny a refund claim. In *Bohn*, the Department publicly announced it would deny refunds and this Court nevertheless required exhaustion. 174 Ariz. at 250-51. At bottom, an "administrative action cannot be deemed futile if the

agency has the power to provide some relief." *Moulton*, 205 Ariz. at 514, ¶ 24. Here, the Department can grant Plaintiffs complete relief: a full refund of every cent they have paid under the TPT. Exhaustion is not futile.

* * *

The superior court correctly applied the exhaustion framework, concluding that Plaintiffs "offer no satisfactory response to *Moulton*" and that Arizona courts have "unfailingly held that tax matters must be exhausted with ADOR before being brought in superior court." ROA 45 ep 3-4 (quoting *Moulton*, 205 Ariz. at 512, ¶ 14). This Court should affirm.

II. The superior court correctly found that Prop. 490 was not a referendum.

The superior court also correctly concluded that Plaintiffs' claims fail on the merits because Prop. 490 was not a referendum under article 4, part 1 of the Arizona Constitution. ROA 45 ep 4-6. This alternative holding is an independently sufficient basis to affirm.

Plaintiffs claim that Prop. 490 is invalid because it did not receive 60% of the vote as required by Section 1(5) for a "referendum to approve a tax." Ariz. Const. art. 4, pt. 1, § 1(5). But by its own terms Section 1(5) applies only to a "referendum." The superior court correctly concluded that Prop. 490

was a ballot measure to approve a tax, not a referendum, so the 60% requirement does not apply. This Court should affirm.

A. Prop. 490 is not a referendum under the City Charter or the Arizona Constitution.

Both state and municipal law consistently distinguish between the tax-approval process and the referendum process. The processes are governed by different authorities, and each operates independently of the other.

State law specifically authorizes the tax-approval process. Under A.R.S. § 42-6006, a "city or town may submit any issue relating to a transaction privilege tax … to the qualified electors of the city or town at any regular or special municipal election[.]" Under municipal law, the Scottsdale City Charter provides that any TPT rate exceeding "one percent" must be "approved by a majority of the qualified electors of the city, voting on the question whether such a rate should be approved at a general or special election wherein such question has been submitted." Charter art. 6, § 9. Together, these provisions establish a complete framework for the City to seek voter authorization to enact a new tax via a majority vote.

The referendum process is a separate power that rests on separate authority. Under state law, the referendum power is reserved to the people

by article 4, part 1 of the Arizona Constitution, which recognizes both a state referendum power (§ 1(3)) and a local referendum power (§ 1(8)). Under Section 1(3), the state "legislature, or five percent of the qualified electors may order the submission to the people at the polls of any measure … enacted by the legislature." Ariz. Const. art. 4, pt. 1, § 1(3). By its plain text, this section applies to the state legislature, not city councils. *See id.* (requiring "approv[al] by the governor" for "emergency measures … passed by the legislature"); *Transparent Payson v. Town of Payson*, 574 P.3d 253, 256, ¶ 12 (Ariz. Ct. App. 2025) ("Defining 'Legislature' to include city or town councils, which lack a senate and house of representatives, would not constitute an 'ordinary' or 'commonly accepted meaning' of the term."). Under Section 1(8), "ten percent of the electors may propose the referendum on legislation enacted within and by such city, town or county." Ariz. Const. art. 4, pt. 1, § 1(8). This section applies to municipal referenda and requires that electors, not councils, initiate the referendum process, after the local council has "enacted" legislation. Neither the Charter's referendum provision nor the Constitution's referendum provisions have anything to do with authorizing a city to submit a proposed tax to the voters for initial enactment.

Under municipal law, the Scottsdale City Charter houses the referendum power in article 10, § 1, which allows legislation that the Council enacted to be submitted "to the electors for adoption or rejection" in "the same manner and with the same force and effect as matters submitted on petition." Charter art. 10, § 1; *see also Scottsdale v. Super. Ct.*, 103 Ariz. 204, 206 (1968) (recognizing that the initiative and referendum powers are reserved for the people, not the Council).

The following chart illustrates these separate authorities, confirming that both municipal and state law distinguish between them:

	Municipal law	**State law**
Tax approval	Scottsdale City Charter art. 6, § 9	A.R.S. § 42-6006
Referendum	Scottsdale City Charter art. 10, § 1	Ariz. Const. art. 4, pt. 1

The two processes do fundamentally different things. The tax-approval process asks the voters to authorize the Council to impose, or to change the rate of, a tax—a step that must precede any binding action by the Council. Without that authorization, the Council cannot lawfully enact or increase the tax. The referendum process, by contrast, asks the voters *whether to keep or reject* a law that a legislative body has already enacted. In a

referendum, the legislative body acts first, and the voters decide whether that already-enacted law should stand. That is what article 10, § 1 of the Charter contemplates: voters deciding whether to "adopt[] or reject[]" legislation the Council has already passed. Put differently, the tax-approval process is prospective—it authorizes the Council to legislate—while the referendum process is retrospective—it confirms or nullifies law that already exists.

The broader statutory landscape confirms that the tax-approval process is different from the referendum power. State law expressly authorizes cities to submit matters to voters outside the referendum power in other contexts too. The Constitution provides that a city charter may "be amended by amendments proposed and submitted by the legislative authority of the city to the qualified electors thereof[.]" Ariz. Const. art. 13, § 2. "Amendments to a city or town charter may be proposed and submitted to the people by the council" of charter cities. A.R.S. § 19-143(C). And § 42-6006 authorizes the City to submit a TPT for voter approval. As the superior court concluded, these types of statutory authorizations are distinct from the referendum power. *See* ROA 45 ep 5. None of them are referenda. Plaintiffs' theory—that any submission of a matter to voters is necessarily an exercise

of the referendum power—would collapse these independent authorizations into the referendum power and render them superfluous. *See Grand v. Nacchio*, 225 Ariz. 171, 175-76, ¶ 22 (2010) ("We ordinarily do not construe statutes so as to render portions of them superfluous.").

Here, the Council invoked the tax-approval process. In 2024, the Council passed a resolution placing before voters the question of whether it should be authorized to enact a 0.15% TPT rate increase. ROA 30 ep 21; ROA 45 ep 2. That resolution expressly invoked article 6, § 9 of the City Charter: "Article 6, Section 9 of the Scottsdale City Charter requires the approval of the qualified voters of the City for a tax rate change above 1%[.]" ROA 30 ep 21.

The Council did not invoke article 10, § 1 of the Charter. Nor could it: the Council did not enact a rate change and then refer it to the voters for adoption or rejection. It passed a resolution asking voters whether the Council should be authorized to enact a 0.15% TPT rate increase in the first place. Although the City has long maintained a TPT, the proposed rate increase could not lawfully take effect without voter authorization under article 6, § 9 and A.R.S. § 42-6006. The voters were not accepting or rejecting an existing law—they were deciding whether the Council should be

authorized to change the TPT rate. Consistent with that authorizing function, the Council had to take further legislative action after the election, by enacting an ordinance codifying the voter-approved rate. ROA 30 ep 149; 170-202, ROA 45 ep 2. Had Prop. 490 been a referendum under article 10, § 1, voter approval alone would have put the tax into effect. Instead, the Council itself had to enact the rate change once the voters authorized it to do so.

As the superior court correctly found, "The City Council … did not submit legislation it had enacted for consideration by the electors. It submitted Proposition 490 for enactment by the electors." ROA 45 ep 5. Voting for "approv[al]" of a proposed tax under article 6, § 9 is not the same as voting "for adoption or rejection" of enacted legislation under article 10, § 1. Prop. 490 was not a referendum under the Charter.

Nor could Prop. 490 qualify as a referendum under the Arizona Constitution. Article 4, part 1 requires two things that Prop. 490 lacks: that (1) electors, not the council, initiate the referendum, and (2) the legislation being referred has already been "enacted" by the local council. *See* Ariz. Const. art. 4, pt. 1, § 1(3), (8). Prop. 490 does not satisfy either requirement. As the superior court explained, "Proposition 490 was not proposed by ten percent of the electors—it was proposed by the City Council." ROA 45 ep 5.

And the Council did not refer legislation it had already enacted, it "submitted Proposition 490 for enactment by the electors." *Id.*

Because Prop. 490 was submitted to the voters under the tax-approval process (Charter art. 6, § 9 and A.R.S. § 42-6006) and not under the referendum process (Charter article 10, § 1 or Constitution article 4, part 1), Section 1(5)'s 60% threshold for tax referenda does not apply. The superior court correctly concluded that "Proposition 490 was not a referendum." ROA 45 ep 4-5.

B. Council-initiated ballot measures submitted under statutory authority are not referenda.

Longstanding Arizona law confirms that Prop. 490 was not a referendum. As the superior court recognized, "our courts … have not taken such a restrictive view of municipal authority and have held that cities may submit matters to voters as authorized by statute." *Id.* ep 5.

For example, in *Clay v. Town of Gilbert*, 160 Ariz. 335 (App. 1989), this Court held that Gilbert's submission of bond and utility-acquisition questions to voters was not a referendum. The Court noted that "[u]nlike the state legislature, local legislative bodies have no authority to *voluntarily* refer matters to the electorate." *Id.* at 340 (citing *City of Scottsdale*, 103 Ariz. at 206).

Gilbert was "statutorily required to submit Questions 1 and 2 to its qualified voters." *Id.* at 341. "The election did not result from a proposal by 10% of the Town's voters, as set forth in Ariz. Const. art. 4, pt. 1, § 1(8)," so it was not a referendum, and the restrictions surrounding referenda did not apply. *Id.*

The same analysis applies here. As the superior court explained, "[a] statute similarly authorizes the City of Scottsdale to submit the TPT for consideration by the voters." ROA 45 ep 5 (citing A.R.S. § 42-6006). Just as statutes authorized Gilbert to submit questions outside the referendum power, § 42-6006 authorizes Scottsdale to submit TPT questions to the voters. In both cases, the restrictions for constitutional referenda—including the 60% requirement—do not apply.

Plaintiffs attempt to distinguish *Clay* (at 33-34) by arguing that Gilbert is not a charter city and could not adopt the Constitution's legislative-referral referendum power. The superior court correctly rejected this argument. ROA 45 ep 6. If municipalities can submit measures to voters only through the constitutional referendum power, then Gilbert—which had no legislative-referral power—could not have submitted anything. Yet this Court recognized that Gilbert could submit matters to voters because it was "statutorily required" to do so. 160 Ariz. at 341. Here, the superior court

explained that "the Arizona Court of Appeals recognized that matters could be referred to the electorate by municipal bodies acting outside the referendum power if authorized by statute." ROA 45 ep 6. That is precisely what the City did, as § 42-6006 authorizes.

The superior court also correctly concluded that "[t]he City of Scottsdale's adoption of the Constitution's legislative referendum authority does not preclude it from submitting a proposition to electors pursuant to a statute as our courts have held they can." *Id.* ep 6.

City of Scottsdale reinforces this conclusion. There, the Supreme Court examined the same Charter provision Plaintiffs invoke—article 10, § 1—and held that "there is no express authority in the charter provisions for the council to voluntarily refer an ordinance." 103 Ariz. at 206. The Court found it "abundantly clear" that "the voluntary submission of the ordinance by the council to a special vote of the people, in the absence of a referendum petition therefor, was wholly without authority and outside the delegated powers of the city council." *Id.* "[W]hen the legislature grants to a municipal corporation power to do any act and prescribes the manner in which the power shall be exercised, the power must be exercised in the manner stated in the grant and not otherwise[.]" *Id.* at 207 (citations omitted). The

referendum power under Section 1(8) is reserved to the electors, not to the Council.

C. Plaintiffs' contrary arguments lack merit.

Plaintiffs do not dispute that if Prop. 490 was not adopted via the referendum process, then the 60% threshold for tax referenda in Section 1(5) does not apply. The central question on this issue is whether it was adopted via the referendum process. Plaintiffs' argument on this front lacks merit.

1. The two-form referendum theory does not help Plaintiffs.

Relying on Section 1(3) and *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488 (1991), Plaintiffs argue (at 27-29) that the constitutional referendum power "has two forms." They say the Council's submission of Prop. 490 constitutes the legislative-referral, which "permits the legislature to refer a legislative enactment to a popular vote." 169 Ariz. at 488. But *Wennerstrom* involved whether *citizens* may initiate referenda of city council resolutions under Section 1(8). *Id.* at 487. The court did not consider whether *city councils* may submit referenda to voters.

Indeed, the legislative-referral form of the referendum power in Section 1(3) is granted to the bicameral state "legislature," not to city

councils. As this Court recently confirmed, "[d]efining 'Legislature' to include city or town councils, which lack a senate and house of representatives, would not constitute an 'ordinary' or 'commonly accepted meaning' of the term." *Transparent Payson*, 574 P.3d at 256, ¶ 12.

The *City of Scottsdale* court reached the same conclusion. It observed that Section 1(3) "provides that the state 'Legislature, or five per centum of the qualified electors may order the submission to the people at the polls of any measure … enacted by the Legislature.'" 103 Ariz. at 206. Section 1(8), by contrast, "makes no such proviso for voluntary referral by their respective legislative authorities (i.e., city council)[.]" *Id.* The general laws drew "no parallels … as to the legislature and council" and were "silent as to the power of a city council 'to order the submission of any measure' to a vote of the people at the polls." *Id.* "Thus by implication a corresponding power to that granted the state legislature … is not delegated to the city council." *Id.*

2. Article 10, § 1 of the Charter does not convert the Council's action into a referendum.

Plaintiffs focus (at 27-29) on City Charter article 10, § 1, which allows the Council to submit matters "to the electors for adoption or rejection" in "the same manner and with the same force and effect as matters submitted

on petition." But as explained above (§ II.A), the Council did not act under article 10, § 1. It acted under article 6, § 9—a distinct provision that specifically addresses TPT approval. *See* ROA 30 ep 21.

"[W]here two statutes deal with the same subject, the more specific statute controls." *Pima County v. Heinfeld*, 134 Ariz. 133, 134 (1982). Article 6, § 9 specifically addresses voter approval of TPT increases that result in rates above one percent. Article 10, § 1 addresses the City's general initiative and referendum powers. Because Prop. 490 was a TPT-approval measure, article 6, § 9 is the controlling provision.

It would make no sense to read article 10, § 1 as subjecting TPT-approval votes to a different percentage threshold than the one specifically set out in the Charter provision governing TPT approval. That is particularly true because both state and municipal law consistently distinguish between the tax-approval process and the referendum process. As discussed above (§ II.A), A.R.S. § 42-6006 expressly authorizes cities to submit TPTs to the voters, separate and apart from the referendum power in article 4, part 1. And the Charter itself locates TPT approval in article 6 (Taxation and Finance), not in article 10 (Initiative, Referendum and Recall). Plaintiffs' reading would collapse those distinct processes and override the specific

mechanisms the Charter prescribes for TPT approval. That the City also possesses the referendum power under article 10, § 1 does not mean that every submission to voters must proceed through that provision. Arizona law recognizes multiple mechanisms for placing matters before voters (e.g., charter amendments, bond elections, TPT submissions), each with its own requirements. *See* Ariz. Const. art. 13, § 2; A.R.S. § 19-143(C); *id.* § 42-6006.

3. Plaintiffs' authorities do not support extending Article 4's referendum power to municipal referrals.

Plaintiffs insist (at 24-25, 28-29) that the City cannot give itself a power the Constitution does not confer. But Scottsdale is a charter city, and article 13, § 2 of the Constitution allows the people of Scottsdale to "frame a charter for [their] own government consistent with, and subject to, the Constitution and the laws of the state" to serve as the City's "organic law." The people of Scottsdale exercised that authority when they enacted Charter article 6, § 9, which prescribes the majority-approval procedure for TPT increases. And the State independently authorized that procedure under A.R.S. § 42-6006. The City did not conjure its authority out of thin air. It acted pursuant to a Charter adopted under express constitutional authority, consistent with a statute that specifically authorizes the voter-approval procedure used here.

Relying on *Hoffman v. Reagan*, 245 Ariz. 313, 316, ¶ 11 (2018), Plaintiffs contend (at 31-32) that a Council referral is itself an "enactment" subject to the referendum power. But *Hoffman* involved a referral by the state legislature, which possesses the legislative-referral power under Section 1(3). It said nothing about city councils acting under a separate Charter provision and specific statutory authority. Section 1(3) has no analog in Section 1(8). That the Council's resolution may be an "enactment" in some general sense does not convert it into an exercise of a constitutional power the Council does not possess. Nor does it transform a voter-approval process that Charter article 6, § 9 and A.R.S. § 42-6006 specifically authorize into a constitutional referendum.

Plaintiffs also rely (at 24, 36-38) on *Sedona Priv. Prop. Owners Ass'n v. City of Sedona*, 192 Ariz. 126 (App. 1998), to argue that statewide constitutional provisions may apply at the municipal level through A.R.S. § 19-141(D). In *Sedona*, the Court concluded that then-§ 19-141(C) (now subsection (D)) "makes section 1(6) of the constitution applicable to local initiatives" because "[t]he closest thing to a legislature at the city level is the city council." 192 Ariz. at 127, ¶ 8.

But *Sedona* does not control, and in any event it was wrongly decided. *Sedona* addressed only Section 1(6)'s provision about the repeal power, which is about who can act, not what numerical standard applies. Said otherwise, *Sedona* addressed the scope of the initiative power once exercised, whereas this case involves the threshold question whether the referendum power was exercised at all. *Sedona* does not control on that question.

This Court's more recent decision in *Transparent Payson* rejected the premise that article 4's references to the "legislature" encompass city councils. In interpreting Section 1(6), the Court held that the Voter Protection Act's "language is clear and unambiguous—it is directed at the bicameral state legislature, not 'local councils.'" 574 P.3d at 256, ¶ 12.

Plaintiffs acknowledge (at 37 n.9) that *Transparent Payson* "seemingly came to a different conclusion." They attempt to cabin it to the Voter Protection Act, but the Court's textual holding—that "Legislature" does not include city councils—applies broadly and undercuts *Sedona*.

As for § 19-141(D), where (as here) the question is the meaning and scope of the Constitution, the answer comes from the Constitution itself, not from a statute. *See Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) ("When interpreting the scope and meaning of a constitutional provision" the Court

"first examine[s] the plain language of the provision." (citations omitted)). The legislature cannot enlarge a constitutional limitation any more than it can enlarge a constitutional power. A statute cannot make Section 1(5) go where its text does not reach.

4. Prop. 490 was properly enacted by a majority of voters.

Plaintiffs at times suggest (at 8, 26-27) that even if Prop. 490 was not a referendum, it still wasn't properly enacted because it failed to satisfy article 6, § 9's requirement that the TPT be approved by "a majority of the qualified electors." The superior court correctly found that Plaintiffs waived this argument because it "was not raised in the parties' extensive briefing and so was not properly before the Court." ROA 45 ep 2 n.1 (citation omitted). Plaintiffs do not directly argue that this Court should reverse on this basis, but in any event, it is both waived and wrong.

(a) Plaintiffs waived any qualified-electors argument.

Plaintiffs argue that Prop. 490 was not properly enacted because it was not approved by a majority of qualified electors. But that argument is not in this case. Plaintiffs' Complaint contains two counts: Count I alleges a violation of article 4, part 1, §§ 1 and 8 based solely on the theory that Prop. 490 needed 60% approval as a referendum (ROA 1 ep 10-11, ¶¶ 47-51); Count

II is a derivative due process claim based on the same 60% theory (*id.* ep 11, ¶¶ 52-57). Neither count alleges that Prop. 490 was invalid under article 6, § 9 because it was not approved by a majority of qualified electors, and Plaintiffs never moved to amend their Complaint to add such a claim.

Nor did Plaintiffs raise the argument in the extensive briefing below—not in their opposition to the City's Motion to Dismiss, their opposition to the Department's Motion to Dismiss, or their preliminary-injunction briefing. They raised it for the first time at oral argument.

On this record, the superior court acted well within its discretion in finding the argument waived. *See Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, 364 n.2 (App. 2015) (declining to consider arguments raised for the first time at oral argument). As the court explained, "the nature of this claim was unclear as it was not raised in the parties' extensive briefing and so was not properly before the Court." ROA 45 ep 2 n.1 (citing *State v. Lopez*, 223 Ariz. 238 (App. 2009)).

Plaintiffs do not challenge this waiver finding on appeal, so it must be affirmed. Nor do Plaintiffs identify a paragraph of their Complaint or any arguments in their brief below that asserted this qualified-electors claim. Plaintiffs should not be permitted to advance the argument here. *See* ARCAP

13(a)(7) (opening brief must contain argument setting forth appellant's contentions, supporting reasons, and legal and factual citations); *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62 (App. 2009) (failure to present claim in opening brief "can constitute abandonment and waiver of that claim").

(b) Prop. 490 was approved by a majority of qualified electors voting on the question.

Even if Plaintiffs had asserted this claim, it would fail on the merits. Article 6, § 9 requires approval by "a majority of the qualified electors of the city, *voting on the question* whether such a rate should be approved at a general or special election wherein such question has been submitted." Charter art. 6, § 9 (emphasis added).

Plaintiffs read the phrase "a majority of the qualified electors of the city, voting on the question," to mean simply "a majority of qualified electors of the city," thereby ignoring the qualifying phrase "voting on the question." This distinction matters. *A majority of the qualified electors* is not the same thing as a majority of the qualified electors *voting on the question*. They represent different thresholds with different denominators. The first counts every registered voter in the City, whether or not they voted—meaning non-voters are effectively counted as "no" votes. The second counts only those who

actually cast a vote on the measure. Article 6, § 9 uses the second formulation ("a majority of the qualified electors of the city, *voting on the question* whether such a rate should be approved"). Prop. 490 cleared that threshold: 140,820 Scottsdale electors voted on Prop. 490, and 82,032 (58.25%) voted in favor—well over the majority required to pass the measure.

Arizona courts interpret statutes "according to the plain meaning of the words in their broader statutory context." *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, 286, ¶ 31 (2023). "[C]ontext is a primary determinant of meaning." *In re Drummond*, 257 Ariz. 15, 18, ¶ 5 (2024) (citation omitted). Each word must be given meaning "so as [not] to render portions of them superfluous." *Grand*, 225 Ariz. at 175-76, ¶ 22.

Read in context, the phrase "voting on the question" limits the universe of "qualified electors" to those who actually cast a vote on the proposition—not all registered voters in the City. The provision requires a majority of the votes cast on the question, which Prop. 490 received with 58.25% approval. Plaintiffs' reading would render "voting on the question" superfluous.

When a law requires approval by a majority of all qualified electors—rather than only of those voting on the measure—it doesn't include a

qualifier. Arizona law consistently draws this distinction. Like article 6, § 9 of the Charter, the Arizona Constitution requires city-charter amendments to be ratified by "a majority of the qualified electors voting thereon." Ariz. Const. art. 13, § 2. By contrast, a "majority of the qualified electors must approve [the] initial imposition" of a hospital-district tax. A.R.S. § 48-1907(A)(6). Before 2022, article 4, part 1, § 1(6)(B) required a "vote of the qualified electors" to immunize initiatives or referenda from legislative repeal, a threshold the Supreme Court interpreted to require approval by a majority of all registered voters, not just those voting on the measure. *See Adams v. Bolin*, 74 Ariz. 269, 273-74 (1952); *Sedona*, 192 Ariz. at 127, ¶ 7 ("In this context, 'qualified electors' means those who are registered to vote, not just those who actually voted.").

Indeed, the Supreme Court has long recognized that "[t]here is a marked distinction between a law approved by a majority of the qualified electors and a law approved by a majority of the electors voting thereon." *Adams*, 74 Ariz. at 274. Drafters know "the difference between a majority of the votes cast thereon and a majority of the vote of the qualified electors," and the formulation they choose must be given effect "so that no part will be void, inert, redundant or trivial." *Id.* The words "voting on the question" in

article 6, § 9 were "intentionally and meticulously selected" to require approval by a majority of the votes cast on the measure, not a majority of voters. *Id.* Prop. 490 was approved by a majority of qualified electors *voting on the question*.

* * *

In sum, the superior court correctly concluded that Prop. 490 was not a referendum. The Council submitted Prop. 490 for enactment by the voters under article 6, § 9 and § 42-6006, not through the constitutional referendum power. Because Prop. 490 was not a referendum, Section 1(5)'s 60% threshold does not apply. The majority-vote requirement of article 6, § 9 governs, and Prop. 490 was properly approved by 58.25% of qualified electors voting on the measure. This Court should affirm.

III. Mr. Stamper lacks standing to challenge the TPT.

The Court should also affirm as to Mr. Stamper because he lacks standing. The superior court did not reach this issue, but Plaintiffs addressed it in their Opening Brief (at 40), and this Court "may affirm the trial court's grant of a motion to dismiss if it is correct for any reason." *Old Republic Nat'l Title Ins. Co. v. New Falls Corp.*, 224 Ariz. 526, 530, ¶ 19 (App 2010). Mr.

Stamper lacks standing because the legal incidence of the TPT falls on businesses, not on him as a consumer.

A. Mr. Stamper has no standing as a consumer who bears a passed-through TPT.

Arizona courts require a plaintiff to "first establish standing to sue" by showing "a particularized injury to themselves." *Bennett v. Brownlow*, 211 Ariz. 193, 195-96, ¶¶ 14, 17 (2005).

Plaintiffs assert (at 40) that Mr. Stamper has standing because retailers list the TPT on his receipts and remit that amount to the Department. ROA 35 ep 4. Settled law rejects this theory.

Arizona's TPT "is an excise tax on the privilege or right to engage in an occupation or business," not a sales tax, and "[l]iability for the TPT falls on the business." *Ariz. Dep't of Revenue v. Tunkey*, 254 Ariz. 432, 433, ¶ 2 (2023). The business "may"—but need not—pass the tax through to customers. *Id.* The pass-through does not shift the legal incidence of the tax from the business to the consumer.

In *Karbal v. Ariz. Dep't of Revenue*, 215 Ariz. 114 (App. 2007), this Court rejected a consumer's claim of standing to challenge TPT charged on hotel stays and car rentals because the "fact that Arizona hotels and car rental

agencies may pass their taxes to customers does not shift the legal incidence of the tax or confer standing[.]" *Id.* at 118, ¶ 18. Plaintiffs' added points—that retailers "conditioned" sales on paying the TPT line item and that A.R.S. § 42-5002 requires remittance of no less than the amount stated—do not transform a customer into the taxpayer. Section 42-5002 prevents a business from over-collecting and pocketing the TPT; it does not shift legal incidence. And conditioning a sale on payment of the full price describes virtually every retail transaction in Arizona—exactly the universal consumer standing that *Karbal* forecloses.

B. Mr. Stamper's remaining theories fare no better.

Mr. Stamper also claims standing based on hypothetical future use-tax liability, ROA 1 ep 6, ¶ 27, but he does not allege paying Scottsdale use tax, the Department has no record of such payment, and exposure is unlikely because nearly every other Arizona municipality has a higher TPT rate. *See* Ariz. Dep't of Revenue, *Transaction Privilege and Other Tax Rate Tables* (June 2026 update), https://azdor.gov/sites/default/files/document/TPT_RATETABLE_06012026.pdf (listing TPT rates for cities and counties). Hypothetical, contingent exposure is not a "particularized injury." *Bennett*, 211 Ariz. at 196, ¶ 17. He

further claims taxpayer standing based on the City's allegedly "illegal" expenditure of TPT revenue, ROA 1 ep 6-7 ¶¶ 28-29, but the only illegality alleged is that the underlying TPT is illegal—a circular theory both *Dail v. City of Phoenix*, 128 Ariz. 199, 202 (1980), and *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 523, ¶ 13 (2021), foreclose. A consumer who lacks standing under *Karbal* cannot manufacture it by relabeling the resulting expenditures.

C. Ms. Jacobs does not cure Mr. Stamper's standing deficiency.

Plaintiffs argue (at 40) that Ms. Jacobs' unchallenged standing keeps the case alive. That may spare the case overall, but does not cure Mr. Stamper's deficiency. The superior court's dismissal should be affirmed as to him.

IV. Plaintiffs' claims are an untimely election contest, or alternatively, are barred by laches.

Even setting aside the exhaustion problem, Plaintiffs' claims fail for an independent reason: they sued too late. Plaintiffs are either too early (for failing to exhaust before going to court on a tax challenge) or too late (whether measured by the five-day election-contest deadline or by laches). Under either characterization of their suit, dismissal was proper. Although

the superior court did not reach these arguments, Plaintiffs' Opening Brief addresses them in detail (at 38-40), and this Court "may affirm the trial court's grant of a motion to dismiss if it is correct for any reason." *Old Republic*, 224 Ariz. at 530, ¶ 19. Each basis is sufficient to affirm.

A. Plaintiffs' claims are an untimely election contest.

The simplest way for this Court to resolve the timeliness issue is to recognize what Plaintiffs' claims actually are: an election contest filed six months too late.

Election contests must be filed "within five days after completion of the canvass of the election and declaration of the result thereof[.]" A.R.S. § 16-673(A). This requirement applies to city elections. *See* A.R.S. § 16-674(A) (authorizing city election contests "on the same grounds and in the same manner as" state election contests). The time limits are mandatory, and unless "strictly complied with[,] the court is without jurisdiction to proceed." *Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978).

Here, the City Council canvassed the election and declared the results on November 22, 2024. ROA 30 ep 35. Any challenge to the election results thus had to be filed by November 27, 2024. Plaintiffs did not sue until May 30, 2025—six months too late.

1. In substance, Plaintiffs allege an erroneous count of votes.

Despite trying to style the Complaint to avoid the five-day deadline, the substance of Plaintiffs' claims fits squarely within A.R.S. § 16-672(A)(5). That statute authorizes election contests on the ground "[t]hat by reason of erroneous count of votes the ... initiative or referred measure ... which has been declared carried, did not in fact receive ... *a sufficient number of votes* to carry the measure." (Emphasis added.) That is Plaintiffs' theory: Prop. 490 "did not receive 60% approval in the referendum" (ROA 1 ep 2, ¶ 3); "failed to garner the 60% approval required by law" (*id.* ep 8, ¶ 36); and "was required to have been approved by at least 60% of voters" (*id.* ep 10, ¶ 44). The entire case is about whether Prop. 490 received "a sufficient number of votes." A.R.S. § 16-672(A)(5).

The timeliness of Plaintiffs' suit depends on the nature of the challenge they actually bring. Some challenges to a law need not be asserted immediately, particularly if the claim is not ripe. For example, a *substantive* challenge, like claiming the law infringes freedom of speech, perhaps could be filed later. But challenging election results—whether a measure received enough votes—must occur immediately. Here, Plaintiffs do not allege a

substantive defect in the tax itself. It is not unconstitutional for a municipality to increase a TPT above one percent, and Plaintiffs do not contend otherwise. The only alleged defect is that the proposition did not receive *enough votes* to pass. That is a challenge to the election, not to the substance of the tax.

To try to avoid this issue, Plaintiffs alleged the election was properly conducted and did not involve an "erroneous count of votes." ROA 1 ep 5, ¶ 21. But this strategic disclaimer does not change the fundamental nature of the claim. Measuring votes against the wrong threshold results in an erroneous count, even if the arithmetic is correct.

And the statute covers more than bare arithmetic; it necessarily includes background principles such as the standard against which the count is measured. Consider an election for Phoenix mayor. Three candidates get 49.5%, 47.5%, and 3% of the vote. The clerk certifies the plurality recipient as the winner, even though Phoenix's Charter requires a runoff to get a majority. That falls under A.R.S. § 16-672(A)(5) because the count was measured against the wrong standard, causing an erroneous count where the declared winner did not receive a sufficient number of votes. Likewise here, A.R.S. § 16-673(A)'s five-day deadline applies because Plaintiffs' challenge falls within A.R.S. § 16-672(A)(5). The basis of the claim

is that Prop. 490 was measured against the wrong standard and did not receive sufficient votes to pass.

2. Plaintiffs cannot plead around the election-contest deadline.

Plaintiffs have a claim only if A.R.S. § 16-672(A) authorizes it. If Plaintiffs' claim falls within that statute, then the five-day deadline in § 16-673(A) applies and their claim is untimely. If their claim falls outside § 16-672(A), then they have no statutory authorization for the challenge at all. *See Donaghey*, 120 Ariz. at 95 ("[E]lection contests are purely statutory and dependent upon statutory provisions for their conduct."). Either way, the claim fails. Under A.R.S. § 16-674, the only authorized election contests for city elections are "on the same grounds and in the same manner" as those for state elections.

Plaintiffs' case framing cannot change this result. To hold otherwise would allow election challengers to creatively plead around the five-day deadline. Every election challenge can be recast as alleging that a proposition did not "become law," including challenges based on illegal votes (A.R.S. § 16-672(A)(4)) or arithmetic errors. Strategically casting a claim in

constitutional trappings does not alter its fundamental nature as a contest over whether a tax measure received sufficient votes.

B. Plaintiffs' caselaw does not support an exception to the election-contest deadline.

Plaintiffs argue (at 38-39) their claim is a "substantive constitutional" challenge exempt from the election-contest statute.

Relying on *Vangilder v. Ariz. Dep't of Revenue*, 252 Ariz. 481 (2022), Plaintiffs suggest there is a categorical distinction between "election" law issues and "substantive" tax challenges. *Vangilder* distinguished between two types of issues: (1) challenges to election procedures, such as ballot language and format, which implicate "election" law, *id.* at 486, ¶¶ 12-14; and (2) challenges to the substance of a tax, such as whether a statute validly imposes a particular rate, *id.* at 487-88, ¶ 23. Plaintiffs' claim—that a measure did not receive a sufficient number of votes—is the paradigmatic election-law issue, not a substantive challenge to the tax itself.

C. Plaintiffs' claims are also barred by laches.

Even if the election-contest statute did not bar the claims, laches independently does. "The defense of laches is available in election challenges," *Sotomayor v. Burns*, 199 Ariz. 81, 82, ¶ 6 (2000), reflecting

Arizona's "strong public policy favoring stability and finality of election results," *Donaghey*, 120 Ariz. at 95. Laches bars a claim when the plaintiff unreasonably delayed and the delay caused prejudice. *Mathieu v. Mahoney*, 174 Ariz. 456, 459 (1993). Courts examine "the justification for delay, including the extent of plaintiff's advance knowledge of the basis for challenge." *Harris v. Purcell*, 193 Ariz. 409, 412, ¶ 16 (1998).

1. Plaintiffs unreasonably delayed in bringing their claims.

Plaintiffs waited over six months to sue, despite having "advance knowledge of the basis for challenge" on election night. *Harris*, 193 Ariz. at 412, ¶ 16. The vote totals were public, and whether a 60% threshold applies is a purely legal question. There was no factual discovery needed, no evolving circumstances, and no justification for delay.

2. Plaintiffs' delay prejudiced the voters and the City.

Election challenges "implicate[] interests well beyond the parties to the case," and parties "must be keenly aware of the need to bring such cases with all deliberate speed[.]" *Mathieu*, 174 Ariz. at 460. Here, prejudice is concrete: voters and the public expected the City to implement the TPT they approved. In reliance, the Council enacted an ordinance and proposed a budget on May 20, 2025 (before Plaintiffs sued) and approved the budget on

June 10, 2025. ROA 30 ep 149, 170-202. The Department posted the new rate, and over 47,000 businesses updated their systems to collect and remit the 1.70% rate.

3. This is a procedural challenge subject to laches.

Courts applying laches to election challenges distinguish "between defects which are substantive and those which are merely procedural." *Citizens for Responsible Gov't v. Kitsap County*, 758 P.2d 1009, 1011 (Wash. Ct. App. 1988). Procedural challenges "may be precluded by ... laches"; substantive challenges to a law's content "can be attacked at any time." *Id.* Plaintiffs do not challenge the *substance* of the TPT—they do not dispute that the TPT rate increase is constitutional. They challenge only the *procedure*: whether Prop. 490 received enough votes. That is the paradigmatic claim laches bars. *See Mathieu*, 174 Ariz. at 456-57 (laches barred challenge to single-subject rule).

4. Plaintiffs' laches arguments fail.

Plaintiffs invoke (at 39) *League of Ariz. Cities & Towns v. Martin*, 219 Ariz. 556 (2009), and *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58 (2020), but neither helps. In *Martin*, the plaintiffs sued with seven months left and the Court still had five months to resolve the case. 219 Ariz. at 559, ¶ 8. Here, the

superior court could not realistically have resolved the dispute before the tax took effect. *Fontes* held that delay did not excuse a county's duty where it could still meet its statutory ballot-mailing deadlines and thus suffered no prejudice. 250 Ariz. at 65, ¶ 30. Neither case addresses the post-election finality concerns here.

Plaintiffs also contend (at 40) that no prejudice arose because they sued ten days after the May 20, 2025 codification. But laches turns on advance knowledge of the basis for challenge, *Harris*, 193 Ariz. at 412, ¶ 16, and Plaintiffs' theory was apparent on election night. Plaintiffs' broader position—that constitutional tax challenges may be brought "at any time during [the tax's] term, even years from now," ROA 36 ep 8—would nullify the election-contest deadline and reward the gamesmanship laches exists to prevent.

Plaintiffs' claims are barred by laches. This Court should affirm on this basis.

V. Courts cannot enjoin a tax.

The Court should also affirm because a court cannot enjoin the collection of a tax, which is what Plaintiffs seek. Although the superior court did not reach this issue, Plaintiffs' Opening Brief addresses it (at 40-41) and

this Court "may affirm the trial court's grant of a motion to dismiss if it is correct for any reason." *Old Republic*, 224 Ariz. at 530, ¶ 19.

A. Arizona law prohibits courts from enjoining the collection of taxes.

Two statutes bar a court from enjoining the collection of taxes. First, A.R.S. § 42-11006 provides that a "court may not issue an injunction … in any action or proceeding … against the state, a county or municipality … to prevent or enjoin … [c]ollecting an imposed or levied tax." And A.R.S. § 42-1254(D)(1) provides that "an injunction, writ of mandamus or other legal or equitable process may not issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest." Neither statute is limited to a particular type of tax. Both apply to any tax.

These statutes reflect a longstanding policy of preventing "the validity of a tax from being tested by injunctive means." *Church of the Isaiah 58 Project of Ariz., Inc. v. La Paz County*, 233 Ariz. 460, 464, ¶ 17 (App. 2013) (citation omitted). The government must "not be hampered or interfered with in the collection of revenues so essential to the sustenance of governmental functions." *Drachman v. Jay*, 4 Ariz. App. 70, 73 (1966). This case illustrates

why: the City has already enacted an ordinance imposing the tax and over 47,000 businesses have updated their systems to collect and remit the new rate. *See* ROA. 30 ep 149, 170-202.

The proper way to challenge a tax is to pay it and sue for a refund. *State ex rel. Lane v. Superior Ct.*, 72 Ariz. 388, 391 (1951). And, as discussed above (Argument § I.A), Arizona has a comprehensive administrative process for that purpose. *See Bohn*, 174 Ariz. at 248. Plaintiffs seek to enjoin implementation of the TPT. ROA 1 ep 2, 12, ¶ 2. They cannot get that relief.

B. The "semblance of authority" exception does not apply.

An exceptionally narrow exception exists where "the challenged taxes have been levied without semblance of authority and resulting injury cannot be adequately provided by proceedings at law." *Isaiah*, 233 Ariz. at 464, ¶ 19 (citation omitted). The taxing official's conduct must "amount[] to legal fraud or the equivalent." *Id.* at 465-66, ¶¶ 20-22. Mere illegality is not enough; otherwise the prohibition "would be meaningless." *Id.* at 464-65, ¶ 20.

Plaintiffs do not invoke the exception. They concede that the election "did not involve misconduct by election officials [or] fraud." ROA 1 ep 5, ¶ 21. The City held a lawful election and implemented the result by Council

vote; a good-faith dispute about the 60% threshold is not "legal fraud or the equivalent." *Isaiah*, 233 Ariz. at 465-66, ¶¶ 20-22.

C. Plaintiffs' authority does not support exempting the TPT from the anti-injunction statutes.

Plaintiffs argue (at 40-41) that the anti-injunction statutes have "no applicability" to the TPT. They contend (at 40) that § 42-11006 applies only to property taxes because the statute appears in Chapter 11, which concerns property taxes, and they invoke *State Compensation Fund v. Symington*, 174 Ariz. 188, 192 (1993). But *Symington* did not interpret § 42-11006. *Symington* addressed former § 42-204(A) (now § 42-11004), which specifically referenced taxes "against … property." 174 Ariz. at 192. That *that* provision (which says "property") applied only to property taxes says nothing about the reach of what is now § 42-11006 (which does not say "property").

Section 42-11006's text broadly prohibits injunctions in "any action or proceeding … to prevent or enjoin … [c]ollecting an imposed or levied tax." It contains no limitation to property taxes or to any other specific tax type. Statutory text controls over chapter headings, which "do not constitute part of the law." A.R.S. § 1-212. Plaintiffs' argument that the statute's placement

in Chapter 11 limits its reach to property taxes ignores the statute's plain text and this interpretive principle.

Moreover, the Supreme Court has applied the anti-injunction principle to TPTs. In *Smotkin v. Peterson*, the Court rejected an attempt to prevent collection of a sales tax imposed "for the privilege of engaging in business," holding that where officials have "a semblance of authority to collect the tax, the remedy is to pay the tax … and sue for its recovery" and that "[t]his remedy is exclusive." 73 Ariz. 1, 3, 5 (1951). *Smotkin* forecloses Plaintiffs' theory that injunctions are permitted outside the property-tax context.

Plaintiffs also contend (at 40) that § 42-1254(D)(1) "only applies to tax appeals." But the statute is not so limited. It provides that "an injunction … may not issue in an action in *any court* in this state against an officer of this state to prevent or enjoin the collection of any tax." A.R.S. § 42-1254(D)(1) (emphases added). It would make no sense to read § 42-1254 as creating a double standard whereby courts cannot enjoin a tax if the case starts with the Department where it belongs, but can enjoin one if it starts in superior court where it doesn't. Under § 42-1251, any taxpayer may initiate an appeal to the Department seeking a hearing or redetermination of tax liability. The policy behind § 42-1254 supports the conclusion that no injunction may issue

in any court to enjoin the collection of any tax, regardless of how the case arrives.

Plaintiffs cite (at 40-41) *Fann v. State*, 251 Ariz. 425 (2021), but the anti-injunction statutes were evidently not at issue in *Fann*. *Fann* simply did not address the question whether courts may enjoin non-property taxes.

In sum, this Court should affirm the superior court's dismissal on the independent ground that Arizona's anti-injunction statutes bar Plaintiffs' requested relief. The long-established rule is that Arizona courts do not enjoin taxes. Plaintiffs' remedy, if any, is to pay the tax and seek a refund—not to bypass the administrative scheme through an injunction.

VI. The 60% threshold does not apply to municipal referenda.

The Court should also affirm because the 60% threshold does not even apply to municipal referenda. Although the superior court did not reach this issue, Plaintiffs' Opening Brief addresses it in detail (at 35-38) and this Court may affirm on any basis supported by the record. *Old Republic*, 224 Ariz. at 530, ¶ 19.

The constitutional text, structure, history, and purpose all confirm that Section 1(5)'s 60% threshold applies only to statewide referenda—not to *local* referenda. Prop. 490 is not a referendum at all (*see* Argument § II). But even

if it were a referendum, it is not a statewide referendum, so Plaintiffs' claims would still fail on the merits.

A. The text of Section 1(5) applies only to statewide referenda.

When interpreting a constitutional provision, this Court must "effectuate the intent of those who framed the provision." *Cain v. Horne*, 220 Ariz. 77, 80, ¶ 10 (2009). The Court begins by "examin[ing] the plain language of the provision" and construes "[e]ach word, phrase, clause, and sentence … so that no part will be void, inert, redundant, or trivial." *Id.* (citation omitted). If "clear and unambiguous," the Court "generally must follow the text of the provision as written." *Jett*, 180 Ariz. at 119.

Here, the text of Section 1(5) establishes two conjunctive conditions for a tax referendum to become law: (1) approval by 60% of the votes cast, *and* (2) "proclamation of the governor." Ariz. Const. art. 4, pt. 1, § 1(5). Both conditions must be met. *See Bither v. Country Mut. Ins. Co.*, 226 Ariz. 198, 200, ¶ 10 (App. 2010) ("The word 'and' is a 'conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first.'" (citation omitted)). The phrase "and not otherwise" reinforces that these are the exclusive conditions.

The "proclamation of the governor" requirement can apply only to statewide measures. Governors do not issue proclamations for city elections. Because the 60% threshold and the governor's proclamation are joined by "and," Section 1(5) as written can operate only at the statewide level.

B. The structure of article 4, part 1 confirms the 60% threshold is limited to statewide measures.

"[C]ontext is a primary determinant of meaning." *Drummond*, 257 Ariz. at 18, ¶ 5. Read as a whole, article 4, part 1 has maintained a deliberate structural separation between state and municipal referenda since statehood. *See The Records of the Arizona Constitutional Convention of 1910*, at 1399-1404 (John S. Goff ed., 1991). As discussed above (Argument § II.A), Section 1(3) prescribes the statewide referendum power, while Section 1(8) separately reserves the referendum power to municipalities. That longstanding division reflects a deliberate choice to treat them distinctly.

Every other provision in article 4, part 1 that references the 60% threshold applies exclusively to statewide measures. Section 1(6)(A) provides that the governor's veto power shall not extend to a tax referendum decided by 60%—but the governor has no power to veto local measures. Section 1(6)(B) restricts the legislature's power to repeal a tax referendum

decided by 60%—but the legislature does not repeal local measures. The same is true of provisions relating to the legislature's diversion of funds (§ 1(6)(C)), the secretary of state's canvass (§ 1(13)), and the reservation of legislative power (§ 1(14)). All reference the 60% threshold, and all apply only to statewide measures.

When voters amended the Constitution through Proposition 132 to add the 60% requirement, they amended Section 1(5), which governs statewide referenda. They left untouched Section 1(8), which reserves the referendum power to cities. This constitutional structure confirms that the 60% threshold does not apply to local ballot measures like Prop. 490.

C. The history and purpose of Proposition 132 confirm the 60% threshold was intended only for statewide referenda.

The history surrounding Proposition 132 reinforces this textual and structural analysis. Proposition 132 amended article 4, part 1 Section 1(5) to require 60% voter approval for tax measures. H.C.R. 2015, 55th Leg., 2nd Reg. Sess. (June 24, 2022), https://www.azleg.gov/legtext/55leg/2R/laws/hcr2015.htm. The legislature referred Proposition 132 to the voters in response to the Invest in Education initiative—a *statewide* tax initiative. *See* Editorial Board, *Propositions 128, 129 and 132 Would Limit Your Power*

Without Fixing Initiatives. Vote No, Arizona Republic (Oct. 30, 2022), https://www.azcentral.com/story/opinion/editorial/2022/10/30/prop-128-129-132-limits-ballotinitiatives-vote-no/10617952002. That Proposition 132 was referred in response to a statewide tax initiative confirms it was intended to increase the threshold for *statewide* measures.

The Senate Fact Sheet confirms that the measure "constitutionally requires 60 percent of voters at a *statewide election*, rather than a majority of voters, to approve an initiative or referendum." Ariz. State Senate Fact Sheet for H.C.R. 2015, 55th Leg., 2nd Reg. Sess. (June 22, 2022) https://www.azleg.gov/legtext/55leg/2R/summary/S.HCR2015GOV_ASPASSEDCOW.DOCX.htm (emphasis added). Nothing in Proposition 132's history supports Plaintiffs' view that the 60% rule applies to city referenda.

The constitutional convention records tell a similar story. When adopting article 4, the framers specifically amended what became Section 1(8) to confirm "the initiative and referendum as to localities," recognizing that without that express provision, the initiative and referendum powers described in article 4 would apply only to statewide measures. Goff at 176. The framers' decision to address municipal referenda in a separate provision and the 2022 voters' decision to amend only Section 1(5) and not Section 1(8)

confirm that the 60% threshold was never intended to extend to municipal ballot measures.

D. The Charter provides the applicable threshold—a simple majority.

Consistent with Section 1(8)'s grant of authority to cities to "prescribe the manner of exercising" the initiative and referendum powers, article 6, § 9 of the Charter requires TPTs to be "approved by a majority of the qualified electors of the city." Because Section 1(5)'s 60% threshold does not apply to local measures, the Charter's majority-vote requirement governs. Prop. 490's 58.25% approval was well above the Charter's threshold.

E. Plaintiffs' arguments do not support extending the 60% threshold to municipal referenda.

Plaintiffs advance (at 35-38) three arguments in support of extending the 60% threshold to municipal referenda.

1. Plaintiffs' "uniform threshold" theory ignores the constitutional text and structure.

Plaintiffs contend (at 35-36) that Section 1(5) establishes a "uniform" vote threshold that applies to all referenda because Sections 1(2), 1(3), and 1(8) do not specify vote thresholds and "only" Section 1(5) does. But this argument ignores the actual text of Section 1(5), which ties the 60% threshold to a "proclamation of the governor."

Moreover, Section 1(8) does not need to specify a vote threshold. The default for any ballot measure is a simple majority. Before Proposition 132, Section 1(5) likewise did not specify a supermajority threshold—because the default was a simple majority. The new 60% threshold applies only to the type of action Section 1(5) addresses: statewide referenda.

2. Section 19-141(D) does not import the 60% threshold into municipal elections.

Plaintiffs again invoke (at 35-36) A.R.S. § 19-141(D), which provides that "[t]he procedure with respect to municipal and county legislation shall be as nearly as practicable the same as the procedure relating to initiative and referendum provided for the state at large[.]" Plaintiffs argue that courts have construed the term "procedure" liberally when applying it to article 4, part 1. But again, Section 1(5) requires 60% approval for statewide referenda. Section 1(8) does not. A statute cannot make the supermajority requirement apply where, by its terms, it does not.

Plaintiffs again rely (at 36-38) on *Sedona*, which applied Section 1(6)'s anti-repeal provisions to local governments through § 19-141.

First, *Sedona* addressed Section 1(6), not Section 1(5). Section 1(6) limits the power to repeal or amend voter-approved measures—a question of

legislative authority that has a natural analogue at the local level (a city council's power to repeal a citizen-initiated ordinance). Section 1(5), by contrast, prescribes the conditions under which a statewide tax referendum becomes law, including the governor's proclamation. These are different provisions, and applying one locally does not compel applying the other.

Second, *Sedona*'s reasoning illustrates precisely the interpretive error described above. The *Sedona* court concluded in a single sentence, with no analysis, that § 19-141 "makes section 1(6) of the constitution applicable to local initiatives." 192 Ariz. at 127, ¶ 8. But courts look to the Constitution to determine the Constitution's scope, not to a statute. Section 19-141 cannot expand the scope of a constitutional provision. Plaintiffs now ask this Court to compound *Sedona*'s error by extending it from Section 1(6) to Section 1(5)—using the same statute to graft onto local elections a supermajority requirement that, by its plain terms, governs only statewide referenda.

Finally, as previously discussed (Argument § II.C.3), this Court's more recent decision in *Transparent Payson* declined to extend article 4, part 1 to local elections. *Transparent Payson* confirms that constitutional provisions directed at statewide officials and institutions cannot be superimposed onto local governments.

Plaintiffs' attempt to distinguish *Transparent Payson* (at 37 n.9) fails. They suggest that it is limited to the Voter Protection Act's anti-repeal provisions in Section 1(6) and does not apply to "how the referendum power itself is defined (Section 1(3)) and exercised (Section 1(5))." But the vote threshold in Section 1(6) was central to the *Sedona* analysis, and Plaintiffs rely on *Sedona* precisely because it applied a statewide vote threshold to local measures. If *Transparent Payson* is correct that article 4's statewide provisions do not automatically apply at the local level, then Plaintiffs cannot selectively invoke *Sedona* to extend only the provisions they prefer.

* * *

In sum, the text, structure, history, and purpose of Section 1(5) all confirm that the 60% threshold applies only to statewide referenda. The Charter's majority-vote requirement governs Prop. 490, and Prop. 490 cleared that threshold. Even if this Court were to conclude that Prop. 490 is a referendum under article 4 (contrary to Argument § II above), Plaintiffs' claims would still fail for this reason alone. The Court should affirm.

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 15th day of May, 2026.

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CERTIFICATE OF COMPLIANCE

1. This certificate of compliance concerns:

☒ A brief, and is submitted under Rule 14(a)(5)

☐ An accelerated brief, and is submitted under Rule 29(a)

☐ A motion for reconsideration, or a response to a motion for reconsideration, and is submitted under Rule 22(e)

☐ A petition or cross-petition for review, a response to a petition or cross-petition, or a combined response and cross-petition, and is submitted under Rule 23(h)

☐ An amicus curiae brief, and is submitted under Rule 16(b)(4)

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3. The document to which this Certificate is attached ☒ does not, or ☐ does exceed the word limit that is set by Rule 14, Rule 22, Rule 23, or Rule 29, as applicable.

Dated this 15th day of May, 2026.

/s/ Eric M. Fraser
Eric M. Fraser

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2026, the foregoing Answering Brief was served via the Court's E-Filer system and served via email to:

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