

SUPREME COURT OF ARIZONA

Southern Arizona Home Builders Association)	Arizona Supreme Court
)	No. CV-21-0211-PR
)	
Plaintiff/Appellant)	Court of Appeals
)	Division Two
)	No. 2CA-CV 2020-0087
v.)	
)	Pima County Superior Court
)	Case No. CV2018-04411
)	
Town of Marana)	
)	
Defendant/Appellee)	
)	
_____)	

BRIEF OF *AMICUS CURIAE*
LEAGUE OF ARIZONA CITIES AND TOWNS
IN SUPPORT OF APPELLEE TOWN OF MARANA

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INTEREST OF AMICUS CURIAE

Pursuant to Rule 14 and Rule 16, Ariz. R. Civ. App. P, this amicus curiae brief (“**Brief**”) is submitted by the League of Arizona Cities and Towns (“**League**”) in support of the Town of Marana (“**Town**”). This brief is being lodged concurrently with a Motion for Leave Amicus Curiae Brief (“**Motion**”) for the reasons stated in the Motion.

The League is a voluntary association of the 91 incorporated cities and towns in the State of Arizona, representing approximately 79% of Arizona’s total population. The League provides collective advocacy, education, training, technical assistance, and information-sharing for and amongst the cities and towns of Arizona.

The League respectfully submits this Brief in support of the Town because the issues presented involve matters of fundamental importance to Arizona cities and towns, namely their ability to support comprehensive planning efforts, future development, and economic growth through the use of development impact fees under Arizona Revised Statutes (“**A.R.S.**”) § 9-463.05. The League will provide this Court with a statewide municipal perspective on the issues presented in this case and represent the general interests of its member municipalities. The League’s goal is to complement the Town’s positions without repeating the same arguments.

Municipalities throughout the state have, for many years, assessed development impact fees under § 9-463.05 to offset the costs associated with providing facilities and services necessary for new development. Relying on the express statutory language in § 9-463.05, municipalities understand that such legislatively formulated fees are proper so long as the procedural and substantive requirements of § 9-463.05 are met. This statute provides a critical tool for accommodating new growth and ensuring new development “pays its own way.” The League’s members have a substantial interest in ensuring this tool remains in their toolbox. Arizona cities and towns certainly ought to be able to rest assured that their infrastructure improvement plans will not be second-guessed by courts and the associated impact fees can be used to defray the costs of providing municipal infrastructure and services to support new development.

INTRODUCTION

All parties agree that § 9-463.05 requires Southern Arizona Home Builders (“**SAHBA**”) to pay its share. And there is no question that SAHBA receives (and will continue receive) significant benefits from the Town’s water and wastewater systems. Even so, SAHBA asks this Court to relieve it from paying *anything*.

SAHBA contends the Town’s impact fee ordinances facially violate § 9-463.05. They do not. The undisputed evidence shows the Town Council adopted the fees in accordance with § 9-463.05 and SAHBA has not shown how the

decisions of the Town Council were arbitrary, fraudulent, or discriminatory in any way.

We urge this Court to affirm. Reversing the ruling of the lower court would subject the Town and other municipalities in Arizona to uncertainty and untold financial harm. The degree to which each municipality would be affected would differ based on their circumstances, but the likely negative impacts are undeniable. A reversal could also bring into question the validity of scores of other impact fees.

ARGUMENT

A. SAHBA IS NOT ENTITLED TO A FREE RIDE.

I. SAHBA Failed To Overcome The Presumption Of Validity.

Neither party disputes the Town’s impact fee ordinances constitute legislative acts. A litigant who challenges the validity of a legislative act bear a heavy burden of proof because the act comes before this Court cloaked with a presumption of validity unless the litigant can show the decision was arbitrary, fraudulent, or discriminatory. *See, e.g., Town of Peoria v. Hensley*, 26 Ariz. App. 30, 545 P.2d 992, 994 (Div. 1 1976) (“ . . . the test is not whether the trial court's opinion is supportable, the test is whether the common council's opinion is supportable, that is, not arbitrary, fraudulent or discriminatory”); *City of Phoenix v. Fehlner*, 90 Ariz. 13, 17, 363 P.2d 607, 609 (1961) (applying the presumption to a zoning ordinance); *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 187

Ariz. 479, 482, 930 P.2d 993, 996 (1997) (“*Scottsdale*”) (applying the presumption to an impact fee ordinance); *City of Tempe v. Del E. Webb Corp.*, 13 Ariz. App. 597, 600, 480 P.2d 18, 21, *modified on reh'g*, 14 Ariz. App. 228, 482 P.2d 477 (1971) (applying the presumption to a local tax ordinance).

As noted by the lower courts, SAHBA has not provided any evidence that the Town Council’s decisions were arbitrary, fraudulent, or discriminatory. Instead, SAHBA makes an astonishing assertion that a presumption of validity does not apply because SAHBA is not raising any constitutional challenges. Pet. for Rev. of S. Ariz. Home Builders Assoc. (“**Pet.**”) at 13, fn. 1; Supp. Br. of S. Ariz. Home Builders Assoc. (“**Supp. Br.**”) at 12, fn. 7. SAHBA doesn’t even attempt to provide the Court with cases in support of this novel theory. There is no support for SAHBA’s assertion. Courts have consistently applied a presumption of validity to *non*-constitutional challenges. *See, e.g., Town of Peoria*, 26 Ariz. App. at 30, 545 P.2d at 994 (statutory challenge to an ordinance and its assessment method); *Hammer v. City of Tucson*, 26 Ariz. App. 229, 231, 547 P.2d 500, 502 (Div. 2 1976) (statutory challenge to an ordinance and its assessment); *City of Tempe*, 13 Ariz. App. at 600, 480 P.2d at 21 (statutory, charter, and constitutional challenges to an ordinance imposing local taxes).

SAHBA also relies on what it calls a “Legislative admonition” in § 9-463.05(M) (“**Subsection M**”) to object to any presumption of validity. *See* Pet. at

13. SAHBA’s reliance on Subsection M is misplaced. Subsection M was added in 2011 to require a narrow construction of the powers granted under § 9-463.05 to ensure impact fees “are not used to impose on new residents a burden all *taxpayers* of a municipality should bear equally.” A.R.S. § 9-463.05(M) (emphasis added and citation omitted) (added by 2011 Ariz. Legis. Serv. Ch. 243) (“**S.B. 1525**”).¹ Here, SAHBA conveniently glosses over two elements of Subsection M: (i) SAHBA has not presented evidence to show how the taxpayers of the Town should bear the costs of these specific water and sewer improvements *equally* with the new development for which the improvements were undertaken; and (ii) SAHBA ignores the specific reference to “all taxpayers,” when it is not all *taxpayers* of the Town who will bear the cost of water and sewer improvements that SAHBA seeks to shift away from the developers; it is the *water and sewer customers* who will shoulder that burden on behalf of the developers. That’s because the Town operates water and wastewater facilities as enterprise funds, which means the water and sewer rates and charges paid by customers are intended to fund water and wastewater utilities.² *See* Town of Marana 2021-2022 Budget, Town of Marana, Ariz. pp. 1, 26, 29, 44, 52, 179, 191 (2021). Subsection M and the rest of the

¹ This is nearly identical to the language used by this Court in impact fee cases. *See, e.g., Scottsdale*, 930 P.2d at 998. (“We are sensitive to the need to ensure that development fees are not used to impose on developers a burden all the taxpayers of a city should bear equally.”).

² The Town does not have property taxes.

statute regarding the allocation taxes³ do not address burden-shifting to the Town's *utility customers* to allow SAHBA's member developers to pay *nothing*. SAHBA also has not presented anything to controvert the Town's evidence that, but for new development, the Town did not need to expand its wastewater treatment capacity. Instead, SAHBA chooses to ignore that inconvenient fact and instead asks this Court to apply Subsection M so broadly that these utility customers, who didn't need the expansion, would be required to subsidize all the costs necessitated by development.⁴

Moreover, SAHBA asks this Court to ignore case precedent about legislative discretion, including a decision regarding impact fees that was issued *after* the

³ Among other things, S.B. 1525 amended § 9-463.05 to: (i) address new requirements regarding excise tax rates and excise taxes , transaction privilege tax rates , transaction privilege tax classifications , ad valorem property taxes , and construction contracting tax rates; (2) require offsetting development fees if a construction contracting tax rate (or similar excise tax rate) exceeds the transaction privilege tax (“**TPT**”) rate imposed on the majority of other TPT classifications; (3) require the excess portion of the construction contracting or similar excise tax to be treated as a contribution to the capital costs of necessary public services; (4) require the infrastructure improvement plan (“**IIP**”) to provide a forecast of revenues generated by new service units (other than development fees) that includes, among other things, ad valorem property taxes, and construction contracting or similar excise taxes; and (5) prohibit a municipality from increasing its construction contracting or similar excise tax rate to a percentage that is higher than its TPT rate between June 30, 2011, and July 31, 2014. *See* 2011 Ariz. Legis. Serv. Ch. 243.

⁴ If the taxpayers of the Town were forced to subsidize private development costs necessitated by future development, it certainly appears that such a payment of public funds for private benefit violates the Gift Clause of the Arizona Constitution, A.R.S. Const. Art. 9 § 7.

2011 adoption of S.B.1525, *Am. Furniture Warehouse Co. v. Town of Gilbert*, 425 P.3d 1099, 1103 (Ariz. App. 1st Div. 2018) (“*AFW*”). *See* Supp. Br., p. 12, fn.7. But SAHBA provides no line of cases to show why this Court should discount *AFW* or the entirety of case precedent addressing legislative discretion.

In *AFW*, Gilbert’s ordinance required the developers to pay an impact fee under § 9-463.05 that was assessed based on the square footage and main use of a building. *Id.* at 1100. *AFW* disputed Gilbert’s fee methodology and requested a statutory appeal under A.R.S. § 9-500.12(A)(1). *Id.* at 1101. Gilbert denied the request after determining that, because impacts fees are legislative acts adopted pursuant to A.R.S. § 9-463.05, there is no statutory right to an administrative appeal hearing under A.R.S. § 9-500.12(A)(1). *Id.* at 1101. The trial court ruled in favor of Gilbert, applying the same legislative deference standards of *Scottsdale* and holding the impact fee was a legislative action entitled to a presumption of validity. *Am. Furniture Warehouse v. Town of Gilbert*, CV 2013-009133, Minute Entry, 2016 WL 6268694, (Maricopa Cnty. Super. Ct., Nov. 18, 2015). The Court of Appeals affirmed on that point. *See Am. Furniture Warehouse Co.*, 425 P.3d at 1103.

If Gilbert’s ordinance in *AFW* was entitled to a presumption of validity when challenged on constitutional grounds, why would *less* deference be afforded to the Town’s fee ordinance when challenged on *statutory* grounds? *See, e.g., Heller v.*

Doe by Doe, 509 U.S. 312 (1993) (a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity).

In sum, SAHBA seeks a remarkable use of the judicial power to interfere with the Town's legislatively formulated fees. *See, e.g., Indus. Dev. Auth. of Pinal County v. Nelson*, 509 P.2d 705, 708 (Ariz. 1973) (courts are not concerned with the wisdom, necessity, propriety, or expediency of an ordinance because these concerns belong exclusively to the Legislature). The lower courts correctly concluded that SAHBA failed to rebut the presumption and this Court should resist SAHBA's invitation to second guess the judgment of the Town's elected leaders.

II. Nothing in § 9-463.05 prescribes the method for calculating impact fees.

As one delegate of the Arizona Constitutional Convention noted, “the work of fixing rates is the most complicated subject in the economic world.” THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, SUPREME COURT OF ARIZONA (John S. Goff ed., 1991). The language of S.B. 1525 suggests the Legislature understood this complexity and the need to vest local governments with discretion regarding the methodologies to calculate and allocate impact fees in accordance with their infrastructure improvement plans.

According to SAHBA, the Town and its consultants “did nothing in the way of analyzing what can and cannot be included in a development fee under A.R.S. §

9-463.05.” Supp. Br. at 13. First, this is false. A considerable amount of time and effort was spent by the Town and its consultants conducting detailed studies, preparing reports and infrastructure plans, and considering feedback from the community. The Town’s consultant used the “total cost attribution” (“TCA”) method. *See, e.g., TOWN OF MARANA 2017 WATER AND WASTEWATER UTILITY IMPACT FEE STUDY, TOWN OF MARANA, ARIZ. (Sept. 2017) (“2017 Fee Study”).*

This is a generally accepted methodology:

“The total cost allocation method is perhaps the most suitable approach to calculating system development charges. It combines all the elements of the rational nexus criteria, including how existing facilities were financed, the costs of accommodating new development, and the time value of money. . . [M]odifications of the method are possible, such as substituting systemwide asset value and growth-related asset value with systemwide replacement cost and growth-related replacement cost.”

ARTHUR C. NELSON ET AL., *IMPACT FEES: PRINCIPLES AND PRACTICE OF PROPORTIONATE-SHARE DEVELOPMENT FEES* (Am. Planning Assoc. Planners Press 2009); *see also*, Istvan Lippai & James P. Heaney, *Efficient and Equitable Impact Fees for Urban Water Systems*, *J. OF WATER RES. PLANNING AND MGMT.* 75 (Mar./Apr. 2000); ARTHUR C. NELSON, *SYSTEM DEVELOPMENT CHARGES FOR WATER, WASTEWATER, AND STORMWATER FACILITIES* (CRC Press 1995).

While SAHBA may disagree with the choice of methodology, *nothing* in § 9-463.05 prescribes any methodology for calculating or allocating the proportionate shares of the costs. Rather than explain how it believes the

methodology behind the Town’s IIPs is flawed, SAHBA makes a bold (and entirely unsupported) claim that the Town’s IIPs “have no relevance here.” Supp. Br. at 12-17. It is difficult to understand how SAHBA can make such a claim when the phrase “infrastructure improvement plan” appears in the title of § 9-463.05, the phrase is specifically defined, and the phrase appears in the definition of “service area.” *See* A.R.S. § 9-463.05(T)(6), (T)(9). In fact, S.B. 1585 added 55 references to infrastructure improvement plans, including in its legislative intent section. *See* S.B. 1525 §§ 1, 4; *see also*, A.R.S. § 9-463.05, subsections A-H, S, T (referring to “infrastructure improvement plan” or ““infrastructure improvements plan”). S.B. 1585 also added 29 references to “land use assumptions” and specifically defined the phrase. *See* S.B. 1525 § 1; *see also*, A.R.S. § 9-463.05, subsections C-E, G, T. Thus, it is very clear that land use assumptions and infrastructure improvement plans are key components of developing and analyzing impact fees, which should not be discounted by this Court. *See, e.g., State v. Walgreen Drug Co.*, 57 Ariz. 308, 313-14 (1941) (“With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal.”).

SAHBA takes no issue with the Town’s adherence to the lengthy and extensive procedural requirements of the statute, nor does it present evidence to show a flawed methodological approach used by the Town’s consultants. Instead,

it asks the Court to ignore the land use assumptions and IIPs without pointing to evidence in the record that would permit the Court to do so.

III. SAHBA ignores the plain language of the statute.

When interpreting the meaning of statute, courts look primarily to its language and give effect to the statutory terms in accordance with their commonly accepted meanings, unless the Legislature provided its own definition or the context indicates that a special meaning was intended. *See* A.R.S. § 1–213; *see also, Mid Kansas Fed. Sav. and Loan v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128 (1991). If a statute's language is clear and unambiguous, the court will give it effect without resorting to other rules of statutory construction. *Janson v. Christensen*, 167 Ariz. 470, 471 (1991).

SAHBA spends considerable energy discussing “level of service” without ever acknowledging that the Town has discretion to make the determination for its customers. As noted by the Court of Appeals, § 9-463.05 does not define “level of service.”⁵ The Legislature likely understood it would be nearly impossible to universally define “level of service” because municipalities provide different types and levels of services to their customers, and citizens of different municipalities

⁵ The current state of setting and measuring service-level standards in the U.S. water utility sector remains almost entirely voluntary. AWWA Asset Management Committee, *Committee Report: Business Practices to Help Utilities Better Manage Assets*, J. AWWA 61-62 (Jan. 2016).

often have different priorities and expectations. Accordingly, the Legislature left it up to the local governments to determine their respective levels of service for development impact fees. Upon information and belief, twenty-three municipalities in Arizona do not even own water facilities or provide water services⁶ and eighteen municipalities do not own wastewater facilities or provide wastewater services.⁷ There can also be variations in levels of service within the same municipality based on the available infrastructure, supply, and capacity in particular areas.⁸

SAHBA discusses the Town's existing level of service for utility customers in an attempt to shift the cost for improvements made to existing facilities to the

⁶ Apache Junction, Bisbee, Bullhead City, Camp Verde, Carefree, Casa Grande, Clifton, Coolidge, Dewey-Humboldt, Fountain Hills, Guadalupe, Litchfield Park, City of Maricopa, Miami, Paradise Valley, Town of Pima, Pinetop-Lakeside, Sahuarita, Sedona, Sierra Vista, South Tucson, Superior, and Thatcher.

⁷ Upon information and belief: Apache Junction, Carefree, Colorado City, Dewey-Humboldt, Fountain Hills, Litchfield Park, City of Maricopa, Oro Valley, Parker, Payson, Pinetop-Lakeside, South Tucson, Star Valley, and Thatcher, Wellton, Tusayan, Winkelman, Youngtown. Paradise Valley and Tucson do not own the wastewater facilities, but wastewater services are provided through a contractor.

⁸ Similarly, the "level of service" or quality of motor vehicle traffic service of a road will differ based on its location, traffic flow, condition, and numerous other qualitative and quantitative factors. *See, e.g.*, ARIZONA DEPARTMENT OF TRANSPORTATION, ADOT TRAFFIC GUIDELINES AND PROCESSES, 240 TRAFFIC IMPACT ANALYSIS & STATEMENT (August 2021); Evolving Use of Level of Service Metrics in Transportation Analysis, U.S. Department of Transportation (Dec. 7, 2017), <https://www.transportation.gov/office-policy/transportation-policy/level-service-case-studies>.

existing customers.⁹ SAHBA’s argument conveniently omits the key underlying undisputed fact that the existing utility customers did not need modifications to the sewer treatment processes; new development needed those improvements to permit the sewer facilities to expand to meet new demand.

SAHBA also takes liberty with its reading of “necessary public service.” The Legislature chose to define “necessary public service” very broadly. *See* A.R.S. § 9-463.05(T)(5). The definition encompasses a wide range of facilities with life expectancies of three or more years that are owned and operated by or on behalf of the municipality. SAHBA, without support in the record, asserts that aquifer recharge does not fall within this definition of “necessary public service,” such that recharge cannot form the basis for any development fee. Pet. at 12. SAHBA’s assertion contradicts the plain language of the definition. *See, e.g., TDB Tucson Grp., L.L.C. v. City of Tucson*, 228 Ariz. 120, 123 (Ct. App. 2011), *as corrected* (Sept. 29, 2011). In particular, the statute defines “necessary public service” in part as:

- water facilities, “including the *supply*, transportation, treatment, purification and distribution of water, and *any* appurtenances for those facilities”

⁹ If existing necessary public services increase the level of service to existing customers, such increases cannot be at the expense of new development. *See* A.R.S. § 9-463.05(B)(5)(d), (M).

- wastewater facilities, “including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities”

A.R.S. § 9-463.05(T)(7).

The word “including” in the definition introduces examples, not an exhaustive list. *See Prince & Princess Enters., LLC v. State ex rel. Ariz. Dep't of Health Servs.*, 221 Ariz. 5, ¶ 13 (App. 2008); *see also*, ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* § 15 (Thomson/West 2012) (“In normal English usage, if a group “consists of” or “comprises” 300 lawyers, it contains precisely that number. If it “includes” 300 lawyers, there may well be thousands of other members from all walks of life as well. . . . That is the rule both in good English usage and in textualist decision-making.”). *Id.* Thus, the fact that aquifer recharge is not set forth in the examples in the statute does not establish that the Legislature intended to exclude it for purposes of water or wastewater facilities. By using “including,” the definition of “level of service” clearly encompasses facilities that recharge the aquifer for the purpose of setting aside water for future users. To conclude otherwise would deprive municipal utilities of an important water management tool to address water scarcity and population growth.

SAHBA's members are keenly aware of the various ways in which municipalities develop water supplies, so it borders on disingenuous to claim that "supply" is somehow limited to taking the actions necessary only to acquire and develop physical water supplies, when such water is only allowed to be used if the Town has authorization to do so. Recharge is a vital component to acquiring water credits that are primary components of many municipal water portfolios, including the Town's. SAHBA and its members know that, for some communities, no credits means no development. Recharge is vital to the Town's water supply; the record is replete with evidence supporting this fact.

SAHBA also suggests a municipality can collect impact fees only if it builds an entirely new and separate facility to serve new development. This suggestion conflicts with the definition of "facility expansion," which includes "the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service *in order that the existing facility may serve new development.*" A.R.S. § 9-463.05(T) (emphasis added). As noted by the Court of Appeals, this definition clearly contemplates the efficiency gained by upgrading and modernizing an *existing* facility's capacity to serve both existing and future customers. *See* Opinion, ¶12. *See also*, A.R.S. § 9-463.05(B)(5)(d), (T)(3). Put another way, an existing facility can serve *both* existing and new development -

and the new development will only be responsible for its proportionate share of the costs.

The only way to give full force and effect to the plain language of § 9-463.05 is to conclude that the intent of the Legislature was (and is) to vest local governments with discretion regarding the “levels of service” and “necessary public services” to be provided to existing and future customers. This is sound public policy because a local government is in the best position to make such decisions for their communities, and it is not this Court’s prerogative to disturb their legislative determinations to the contrary.

III. SAHBA’s hypothetical provides no value.

In its Petition, SAHBA provides a hypothetical about a theoretical place called Greenville. Pet. for Rev. of S. Ariz. Home Builders Assoc. (“**Pet.**”) at 13-14. SAHBA should know that accommodating new employees in a municipal building is very different and much less complex than accommodating the water and wastewater needs of existing and potential new customers, especially when faced with limited water resources and increasing drought conditions. More importantly, SAHBA fails to explain how an office building for Greenville employees has any connection to impact fees under § 9-463.05. Is Greenville’s office building tied to building permits for new development? Is Greenville assessing impact fees related to its office building? If so, what “necessary public service” will be provided to

new development and how will Greenville calculate and apportion the costs?

SAHBA doesn't say.

According to SAHBA, a “small, outdated building” will be replaced with a new “large, modern, first-class complex” that is “surrounded by ample land” and equipped with “all the latest technology.” Pet. at 14. This new office building will serve the needs of *both existing and future* Greenville employees, which means existing employees will also enjoy the upgraded and more spacious office building. SAHBA has failed to show how the new benefits enjoyed by Greenville employees is analogous to a service that, for an existing Town customer, ends with a flush. In fact, SAHBA has not bothered to point to anything in the record to support its allegation that the Town's improvements to the sewer facilities in this case (including recharge necessary to obtain credits for *new* development) provide the existing residents with a higher level of service. The existing Town customers had water and sewer service already.

The only thing illustrated by the hypothetical is SAHBA's misunderstanding of § 9-463.05 and the practical realities of planning for new water and wastewater demands.

B. IMPACT FEES ARE CRITICAL TO FACILITATING GROWTH.

Water and wastewater services are essential to residents, their communities, and the economy. Arizona's population has increased by nearly 12% since the

2010 census and currently ranks third nationally in percentage growth rate.

ARIZONA: 2020 CENSUS, U.S. CENSUS BUREAU (2021), *available at*

[https://www.census.gov/library/stories/state-by-state/arizona-population-change-](https://www.census.gov/library/stories/state-by-state/arizona-population-change-between-census-decade.html)

[between-census-decade.html](https://www.census.gov/library/stories/state-by-state/arizona-population-change-between-census-decade.html). Water and wastewater infrastructure must have

adequate capacity to support the demands from booming population growth and

the rapidly changing market demands. Utility providers must be prepared to adapt

to regulatory changes and technological advances. These utility providers,

however, face staggering public investment needs.

Local engineers with the Arizona Section of the American Society of Civil

Engineers (ASCE) conducted an extensive evaluation of Arizona's water and

wastewater infrastructure in 2020. *See* ARIZONA SECTION OF THE AMERICAN

SOCIETY OF CIVIL ENGINEERS, 2020 REPORT CARD FOR ARIZONA'S

INFRASTRUCTURE (2020) ("**Report Card**"). The Report concludes that much of

Arizona's water infrastructure is over 30 years old and more than 2,600 miles of

transmission and distribution mains are currently in need of rehabilitation or

replacement. *Id.* at 35. The Report Card also gives C- grades to Arizona's water

infrastructure and wastewater infrastructure. *Id.* at 33, 68. ASCE estimates

Arizona's current water infrastructure needs at \$16 billion. *Id.* at 37. For Arizona's

wastewater sector to maintain the state's economic and projected population

growth, the Report Card concludes that 25 to 50% of the wastewater network

needs rehabilitation, 10% of its wastewater treatment plants need rehabilitation, and more than a dozen wastewater treatment plants must be expanded. *Id.* at 68.

To help address the significant infrastructure challenges, the state law authorizes municipal utilities to engage in long-term planning and assess development impact fees on new development. The impact fee statute recognizes that municipalities must be able to offset costs necessitated by this explosive growth and the new demands on its utility systems.

Lost in SAHBA's arguments is the overarching benefit to new development from development impact fees. Without such fees, it would be up to the individual developers and builders to provide for water supplies and sewage treatment and disposal on a subdivision-by-subdivision basis, and large-scale projects requiring buy-in from multiple property owners (all with differing development timelines and priorities), may not be possible without the municipalities facilitating the effort. If the Court decides to grant SAHBA's members a free ride for the costs of water and sewer infrastructure financed by the Town for the benefit of that same new growth, municipalities may have to determine if it is worth facilitating new growth through development impact fees at the risk of substantial financial turmoil if their legislative determinations are second-guessed after-the-fact.

In its amicus brief, the Home Builders of Central Arizona ("**HBCA**") blames impact fees for the housing affordability crisis. Amicus Br. of HBCA at 13-15.

HBCA also accuses the Court of Appeals of “[putting] home ownership even further out of reach” for nurses, police officers, firefighters, high school teachers, middle school teachers, construction workers, waitpersons and retail workers.” *Id.* at 15. HBCA provided no evidence that impact fees are to blame for the affordability crisis and ignores the fact that some of the Town’s impact fees have *remained the same or decreased* over the past decade (and since the passage of S.B. 1525). For example, the base impact fee for Sewer was \$4,544 prior to the adoption of S.B. 1525 and was reduced to \$4,241 in 2014. Then in 2017, the fee was *further reduced* to \$3,930. *See* 2017 Fee Study at 19-20.

In sum, the outcome of this appeal could have far-reaching and substantial negative impacts upon municipal finances and budgets, capital improvement programs, land use planning, and other government functions. It is not speculation to conclude that overturning the decisions of the lower courts could be devastating to local governments, future development in Arizona, and local economies. The decision could also influence the feasibility of new development projects in Arizona. We urge this Court to affirm.

CONCLUSION

The League respectfully asks this Court to affirm the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 27th day of May 2022 by:

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CERTIFICATE OF COMPLIANCE

This certificate of compliance concerns an amicus curiae brief and is submitted under Rule 16(b)(4) of Arizona Rules of Civil Appellate Procedure. The undersigned certifies that the Brief of Amicus Curiae League of Arizona Cities and Towns in Support of Appellee Town of Marana to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 5759 words. The document to which this Certificate is attached does not exceed the word limit set by Rule 14.

DATED this 27th day of May 2022,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 27, 2022, the following was done:

1. Filed, via the Court’s Electronic Filing System, the Brief of Amicus Curiae League of Arizona Cities and Towns in Support of Appellee Town of Marana with the Arizona Supreme Court;
2. Electronically transmitted one copy of the Brief of Amicus Curiae League of Arizona Cities and Towns in Support of Appellee Town of Marana to the following recipients:

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