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INTEREST OF AMICUS CURIAE

This amicus curiae brief (“Brief”) is submitted by the League of Arizona Cities and Towns (“League”) pursuant to [Rule 14](#) and [Rule 16](#) of the Arizona Rules of Civil Appellate Procedure in support of Defendants/Appellees Town of Payson and Tracie Bailey (collectively “Town”).¹ The Plaintiffs/Appellants Transparent Payson and Jeffrey Aal (“Transparent Payson”) and the Town consented in writing to the filing of this Brief.

The League is a voluntary association of all the incorporated cities and towns in the State of Arizona. It includes 91 member municipalities representing approximately 79% of Arizona’s total population. The League provides collective advocacy, education, training, technical assistance, and information-sharing for and among its members. The League also files amicus briefs in cases with potential statewide impacts on its members.

The League’s members have interests in the proper interpretation of the Arizona Constitution and the question of whether the Voter Protection Act restricts their city and town councils.² *See* [ARIZ. CONST. art. IV, pt. 1, § 1.6 \(B\)-\(C\), \(14\)](#)

¹ The League is neither a party to the appeal nor controlled by any party to the appeal. No person or entity other than the League provided financial resources for the preparation or submission of this Brief.

² The League incorporates by reference the “Statement of the Case,” “Statement of Facts,” and “Standard of Review” in the Defendants’ Answering Brief. [Answering Br. 3-16] The administrative character of the initiatives at issue in this case are not addressed in this Brief because the subject is covered extensively in the Town’s

(“VPA”). The answer to that question is “no.” Nothing in the VPA restricts a non-charter municipality like Payson from exercising its authority to amend or repeal ordinances, including citizen initiatives.

The League’s members also have an interest in seeing that the constitutional allocation and balance of authority, powers, and rights amongst voters and their representative legislative bodies are followed. While the League recognizes the importance of the people’s ability to reform local matters, elevating initiatives beyond a city or town council’s reach—in this and future cases—would fundamentally change our constitutional republic form of government.

INTRODUCTION

The League is not asking the Court to aggrandize the power of a city or town council. The League is asking the Court to apply to plain meaning of the VPA and follow longstanding precedent that the powers of local voters are no greater than those of their city or town council.

The trial court did just that. It concluded that the initiated ordinances are unenforceable, invalid, and of no legal force and effect—and the Town Council was

briefings. The League agrees with the Town that only certain legislative actions are subject to the right of initiative—and that the initiated ordinances in this case are *not* legislative in character.

within its legal authority to repeal them because the VPA does not apply. [ROA 33]

This was the correct conclusion and this Court should affirm.

ARGUMENT

I. THE VPA DOES NOT APPLY.

Petitioner argues the Town Council violated the VPA when it repealed sections 157.01 and 35.04 of the Payson Town Code. This argument is without merit because the VPA does not restrict the Town Council. The VPA restricts the Governor and Legislature only.

Questions of statutory interpretation are reviewed *de novo*. See *3 SL Fam., LLC v. State*, No. 1 CA-CV 22-0247, 2024 WL 4614683, at *2 (Ariz. Ct. App. Oct. 30, 2024). Courts use the same interpretive approach for initiated laws as for a statute enacted by the Legislature. See *id.* at *3. The plain language guides their interpretation. See *Ariz. Advoc. Network Found. v. State*, 250 Ariz. 109, 114 ¶ 19 (App. 2020). If the plain language is unambiguous, courts “must give effect to that language without employing other rules of statutory construction.” *Parsons v. Ariz. Dep't of Health Servs.*, 242 Ariz. 320, 323 ¶ 11 (App. 2017); see also *In re Drummond*, 256 Ariz. 558, 558 (2024) (“When a statute's plain language is unambiguous in context, it is dispositive.”). Terms are given their ordinary and commonly accepted meaning, unless a specific definition was provided by the voters. See *3 SL Fam., LLC*, at *2.

The plain meaning of the words chosen by the voters are viewed “in their broader statutory context.” *In re Drummond*, 256 Ariz. at 558 (citation omitted). In construing specific terms and phrases, courts look to the initiative as a whole and may also be guided constitutional provisions that are of the same subject or general purpose. *See id.* (discussing *in pari materia*). The purpose is to “give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.” *3 SL Fam., LLC*, No. 1 CA-CV 22-0247 at *2 (quoting *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019)). Notwithstanding the above, a court is constrained from rewriting a constitutional provision “under the guise of interpreting it even if [the court] divine[s] a more desirable intended outcome than the text allows.” *Ariz. Free Enter. Club v. Hobbs*, 253 Ariz. 478, 489 ¶ 38 (2022) (citation omitted); *see also Silver v. Pueblo Del Sol Water Co.*, 244 Ariz. 553, 566 ¶ 44 (2018) (“We decline to recast the statute's meaning under the guise of interpreting it.”).

In 1998, Arizona voters approved the VPA (Proposition 105) to expressly limit the Legislature’s authority to amend voter-approved initiative measures. Part of the changes included the deletion of an entire section of the Arizona Constitution that previously provided “[t]he veto power of the Governor, or the power of the Legislature, to repeal or amend, shall not extend to initiative or referendum measures approved by a majority vote of the qualified electors.” *See* Ariz. Sec’y of State, [1998 State of Arizona General Election Publicity Pamphlet](#) (“Pamphlet”) at 44. In its

place, the VPA created four new provisions in Section 6 to specifically address the powers of “the governor,” “the legislature,” and “members of each house of the legislature” with respect to initiative and referenda:³

~~(6) Veto and repealing power~~ **(6) (A) VETO OF INITIATIVE OR REFERENDUM.** ~~The veto power of the Governor, or the power of the Legislature, to repeal or amend, shall not extend to initiative or referendum measures approved by a majority vote of the qualified electors.~~ THE VETO POWER OF THE GOVERNOR SHALL NOT EXTEND TO AN INITIATIVE MEASURE APPROVED BY A MAJORITY OF THE VOTES CAST THEREON OR TO A REFERENDUM MEASURE DECIDED BY A MAJORITY OF THE VOTES CAST THEREON.

(6) (B) LEGISLATURE’S POWER TO REPEAL INITIATIVE OR REFERENDUM. THE LEGISLATURE SHALL NOT HAVE THE POWER TO REPEAL AN INITIATIVE MEASURE APPROVED BY A MAJORITY OF THE VOTES CAST THEREON OR TO REPEAL A REFERENDUM MEASURE DECIDED BY A MAJORITY OF THE VOTES CAST THEREON.

(6) (C) LEGISLATURE’S POWER TO AMEND INITIATIVE OR REFERENDUM. THE LEGISLATURE SHALL NOT HAVE THE POWER TO AMEND AN INITIATIVE MEASURE APPROVED BY A MAJORITY OF THE VOTES CAST THEREON, OR TO AMEND A REFERENDUM MEASURE DECIDED BY A MAJORITY OF THE VOTES CAST THEREON, UNLESS THE AMENDING LEGISLATION FURTHERS THE PURPOSES OF SUCH MEASURE AND AT LEAST THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE, BY A ROLL CALL OF AYES AND NAYS, VOTE TO AMEND SUCH MEASURE.

(6) (D) LEGISLATURE’S POWER TO APPROPRIATE OR DIVERT FUNDS CREATED BY INITIATIVE OR REFERENDUM. THE LEGISLATURE SHALL NOT HAVE THE POWER TO APPROPRIATE OR DIVERT FUNDS CREATED OR ALLOCATED TO A SPECIFIC

³ The constitutional changes are shown in legislative format. The VPA’s additions are shown in CAPITAL LETTERS. The VPA’s deletions are shown by ~~strikeouts~~.

PURPOSE BY AN INITIATIVE MEASURE APPROVED BY A MAJORITY OF THE VOTES CAST THEREON, OR BY A REFERENDUM MEASURE DECIDED BY A MAJORITY OF THE VOTES CAST THEREON, UNLESS THE APPROPRIATION OR DIVERSION OF FUNDS FURTHERS THE PURPOSES OF SUCH MEASURE AND AT LEAST THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE, BY A ROLL CALL OF AYES AND NAYS, VOTE TO APPROPRIATE OR DIVERT SUCH FUNDS.

Id. at 44-45. The VPA also added that “each house of the legislature” can, by supermajority vote, appropriate or divert funds created or allocated to a specific purpose by an initiative measure so long as the appropriation or diversion furthers the measure’s purpose:

(14) Reservation of legislative power. This section shall not be construed to deprive the Legislature of the right to enact any measure: EXCEPT THAT THE LEGISLATURE SHALL NOT HAVE THE POWER TO ADOPT ANY MEASURE THAT SUPERSEDES, IN WHOLE OR IN PART, ANY INITIATIVE MEASURE APPROVED BY A MAJORITY OF THE VOTES CAST THEREON OR ANY REFERENDUM MEASURE DECIDED BY A MAJORITY OF THE VOTES CAST THEREON UNLESS THE SUPERSEDING MEASURE FURTHERS THE PURPOSES OF THE INITIATIVE OR REFERENDUM MEASURE AND AT LEAST THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE, BY A ROLL CALL OF AYES AND NAYS, VOTE TO SUPERSEDE SUCH INITIATIVE OR REFERENDUM MEASURE.

Id. at 46. Finally, the VPA added a new section to address the Legislature’s right to refer any measure to the people:

(15) LEGISLATURE’S RIGHT TO REFER MEASURE TO THE PEOPLE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DEPRIVE OR LIMIT THE LEGISLATURE OF THE RIGHT TO ORDER THE SUBMISSION TO THE PEOPLE AT THE POLLS OF ANY MEASURE, ITEM, SECTION, OR PART OF ANY MEASURE.

Id.

At issue in this case is the meaning of the phrases “the legislature” and “each house of the legislature” in the VPA—and whether they encompass a city or town council. They do not. While the VPA did not include definitions of “the legislature” or “each house of the legislature,” definitions are not necessary because the phrases are unambiguous when viewed in context of how they are used throughout the VPA. *See, e.g., In re Drummond*, 256 Ariz. at 558 (finding that the plain meaning can be determined by viewing words in their broader statutory context); *see also* Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 167 (2012) (“READING LAW”) (explaining that courts must interpret a statute's plain language in context, because “[c]ontext is a primary determinant of meaning”). By requiring a supermajority vote of “each house of the Legislature,” the VPA can *only* be referring to the state Legislature because it is bicameral entity; a city or town council is not a bicameral entity.

The application of the VPA to the state Legislature is further bolstered by the definition in a previous section that provides the “legislative authority of the state shall be vested in the legislature, *consisting of a senate and a house of representatives . . .*” [ARIZ. CONST. art. IV, pt. 1, § 1.1](#) (emphasis added). This definition was the subject of floor debates at the 1910 constitutional convention. *See* [THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910](#) at 1044, 1060, 1402 (John S. Goff ed., 1991) (“Records”); *see also* *READING LAW* at 78

(“Words must be given the meaning they had when the text was adopted.”). There is nothing in the Records indicating the delegates intended “the legislature” to encompass city and town councils. To the contrary, the delegates used the term to refer to the state Legislature and spoke about the need to isolate local initiative and referendum measures in its own section. *See, e.g., RECORDS* at 192, 212, 216.

In its Reply Brief, Transparent Payson asks this Court to ignore the plain meaning and focus on the “sentiment” expressed in a single sentence of the publicity pamphlet to conclude that “the legislature” encompasses a city or town council. [Reply Br. 6]. This approach does not work for several reasons. First, the majority of the current Arizona Supreme Court recently stated that the intent behind legislation is “never an object [of statutory interpretation] itself,” but is simply “a means to discern statutory meaning.” *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 254 Ariz. 432, 438 ¶ 27 (2023) (Bolick, J., concurring joined by Beene, J., Montgomery, J., and King, J.) (quoting *Ariz. Dep't of Revenue v. Action Marine*, 218 Ariz. 141, 143 ¶ 10 (2008)). Instead, the majority said the primary objective is to determine the plain meaning of the words based on their original public meaning and broader statutory context. *Id.* at 437–40 ¶¶ 23–36 (Bolick, J., concurring joined by Beene, J., Montgomery, J., and King, J.). As the majority explained, “the words of a statute are not the best evidence of legislative intent, they are not ‘evidence’ of anything. *They are the law.*” *Id.* at 437 ¶ 26 (emphasis added and citation omitted).

Here, “the legislature” in the VPA clearly and unambiguously means the Senate and the House as explained above. Even if “the legislature” was ambiguous, the secondary rules of construction would lead to the same conclusion, requiring affirmance. For example, this Court will not find anything in the publicity pamphlet and other legislative materials to apply the VPA’s extraordinary vote requirement to local initiatives. The “sentiment” quoted by Transparent Payson in its Reply Brief—when the specific argument is read in its *entirety*—specifically mentions the Legislature’s repeal in 1997 of a *statewide* initiative as a reason to vote in favor of the VPA. *See Pamphlet* at 47-48 (statement of Richard Mahoney, campaign chairman, regarding the Legislature’s actions to amend [Proposition 200](#), approved by Arizona voters on Nov. 5, 1996).

The rest of the arguments in the publicity pamphlet—including the arguments *in favor of* the VPA—give no indication of any intent for the VPA to apply to city and town councils or local measures. Transparent Payson even admits that the arguments in the publicity pamphlet “do not really say one way or another whether it applies to cities and towns.” [Reply Br. 5 (citation omitted)]. That’s because no argument directly or indirectly contends that it will apply to initiatives in cities and towns. Instead, the arguments uniformly discuss the initiative in terms of its impacts on the *state* Legislature, *state* government, the *state* budget, and the like. *See generally Pamphlet* at 47-50.

To conclude, the VPA has no application to this case and this Court must affirm. If voters had intended for the VPA to apply to local measures, they could have easily and clearly done so by incorporating local governments into the language or amending the specific section that deals with local initiatives on “local, city, town, or county matters.” See [ARIZ. CONST. art. IV, pt. 1, § 1.8](#) (citation omitted). Had that occurred, city and town councilmembers would have certainly exercised their rights to free speech and opposed the measure.

II. THE ARIZONA CONSTITUTION BARS VOTERS FROM DOING BY INITIATIVE ANYTHING THE TOWN COUNCIL CANNOT DO.

Transparent Payson suggests the voters had the right to initiate Propositions 401 and 402 [[ROA 28](#)], even though the initiated ordinances are irrevocable, unamendable, and ultra vires. There is no such right to initiate (or to adopt) irrevocable, unamendable, or ultra vires ordinances—regardless of whether the VPA applies.

Interpreting the VPA to apply to a non-charter municipality like Payson would place the municipality in an impossible position. The council could never amend the initiative because it could never obtain a supermajority vote of “each house.” And, unlike the state Legislature, the council could never refer the matter to ballot unless a statute specifically authorized the referral. Restricting the council in such a manner would cloak the initiative with super-statute or quasi-constitutional status where it would remain unamendable and untouchable by council action. This would be

contrary to the longstanding understanding that the people's power is *co-equal* with their representative legislative body. See [Arizona State Legislature v. Arizona Indep. Redistricting Comm'n](#), 576 U.S. 787, 795 (2015) (finding the Arizona Constitution establishes the electorate as a coordinate source of legislation on equal footing with the representative legislative body); [Cave Creek Unified School Dist. v. Ducey](#), 233 Ariz. 1, 4 (2013) (finding the voters and their representative legislative body share lawmaking power under Arizona's system of government). The people and the legislature are not different branches exercising different powers. They both share the same legislative power. See generally [ARIZ. CONST. art. IV, pt. 1, § 1 et seq.](#) This makes sense in a republican form of government where the legislative power of the people is delegated to, and manifests itself in, the people's legislative representatives in the legislative branch.

Co-equal means local voters cannot do anything by initiative that a city or town council cannot do. See [ARIZ. CONST. art. 4, pt. 1, § 1.8](#) (reserving the powers of local initiative to the qualified electors of every municipality as to all local, city, or town matters on which such municipalities are “*empowered* by general laws to legislate”); see also [Robertson v. Graziano](#), 189 Ariz. 350, 352 (Ct. App. 1997). And a non-charter municipality like Payson possesses no greater powers than those delegated to it by the Constitution and general laws of the state. See [City of Scottsdale v. Superior Court](#), 103 Ariz. 204, 205 (1968).

In *Associated Dairy Prods. Co. v. Page*, 68 Ariz. 393, 394 (1949), the Arizona Supreme Court considered an appeal involving the validity of an ordinance enacted by a county board of supervisors designated as a “Public Health Service Milk Ordinance.” At issue was whether the county board of supervisors had the authority to enact said ordinance. *See Id.* The Court recognized that the Constitution vests the legislative authority of the State of Arizona in its Legislature, and that the ordinance was invalid unless the Legislature granted the county board of supervisors the power to adopt such an ordinance. *See id.* at 395. The same principle applies to initiated ordinances because the powers of voters are no greater than those of the city or town council. If a city or town council lacks the statutory authority to pass a particular ordinance, local residents of that city or town also lack the authority to initiate the same ordinance.

Moreover, since city and town councils are prohibited from enacting irrepealable legislation or tying the hands of their successors with respect to ordinances, then the voters are similarly restricted in what they can do via initiative. *See Higgins' Estate v. Hubbs*, 31 Ariz. 252 (1926) (describing legislation that denies a future legislative body the right to repeal an act is “of course unconstitutional, illegal, and void”); *Toma v. Fontes*, 553 P.3d 881 (Ariz. Ct. App. 2024) (stating that one legislative body cannot limit or bind the acts of a future one to alter, limit, or repeal statutes).

There is no constitutional right to initiate (or adopt) irrepealable, unamendable, or ultra vires ordinances—regardless of whether the VPA applies. The initiated ordinances at issue in this case were irrepealable, unamendable, and ultra vires. Should the Court conclude otherwise, the effect of these ordinances would be devastating. It would allow Payson voters to permanently paralyze the Town from entering leases, licenses, and easements of its own property and prevent revenue bonds exceeding \$1,000,000. This would interfere with the property rights of the Town as a municipal corporation, disrupt financial planning, produce significant financial uncertainty, create chaos with respect to public infrastructure projects, and broadly undermine the ability of the Town Council (and its successors) to serve as a democratically representative body. It is vital that the Town Council retain its ability to respond to changing economic circumstances, priorities, and public emergencies. The efficient administration of public services requires local governments to have the ability to plan, so that uncertainty and disruption to those they serve and protect can be avoided. This Court should avoid such a result.

In summary, the Town Council had the authority (and an obligation) to repeal the initiated ordinances. Allowing initiated ordinances that are ultra vires or immune from amendment or repeal would conflict with the Arizona Constitution, and fundamentally alter the balance of legislative powers. Such a seismic a shift to the

foundations of our government can only happen through an actual constitutional amendment, not a judicial decree.

CONCLUSION

The League respectfully asks this Court to affirm. The trial court correctly concluded that the VPA does not apply, and the initiated ordinances are unenforceable, invalid, and of no legal force and effect. Thus, the Town Council was within its legal authority to repeal them.

RESPECTFULLY SUBMITTED this 16th day of December 2024 by:

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