SUPREME COURT OF ARIZONA

ARIZONA FREE ENTERPRISE CLUB, et)	-
al.,)	No. CV-21-0304-AP/EL
)	
Plaintiffs/Appellants,)	Maricopa County
)	Superior Court
V.)	No. CV2021-011491
)	CV2021-016143
KATIE HOBBS, et al.,)	(Consolidated)
)	(= = = = = ,
Defendants/Appellees,)	
and)	
)	
INVEST IN ARIZONA (SPONSORED)	
BY AEA AND STAND FOR)	
CHILDREN), a political committee,)	
, , ,)	
Real Party in)	
Interest/Appellee.)	
)	
	,)	FILED 04/21/2022
	,	E THE 04/21/2022

Decision Order

Before the Court is an expedited election appeal concerning the referendum placing §§ 13 and 15 of S.B. 1828 on the ballot for the 2022 General Election. S.B. 1828 is the taxation appropriations bill for fiscal year 2022. Sections 13 and 15 of the bill impose a "flat" tax of 2.5% on taxable income, which becomes effective if General Fund revenues reach certain specified targets. On June 30, 2021, Governor Ducey signed S.B. 1828 into law.

Real Party In Interest Invest in Arizona seeks to refer \$\$ 13 and 15 of S.B. 1828 to the ballot in the November 8, 2022 General Election under referendum petition R-03-2021. Plaintiffs Arizona Free Enterprise Club, et al., challenge the referendum, alleging 1) \$\$ 13 and 15 are not subject to referendum, and 2) deficiencies in the petition sheets and signatures.

On December 20, 2021, the trial court issued a ruling regarding the first issue. The trial court determined that §§ 13 and 15 are referrable and could be submitted to voters in the

2022 General Election. In reaching this determination, the trial court reasoned, in part, that since §§ 13 and 15 did not appropriate state funds or generate necessary revenue, they did not fall within the "support and maintenance" exception in the Arizona Constitution, and voters therefore have a constitutional right to vote on them. See ARIZ. CONST. art. IV, pt. 1, § 1(3). The trial court, therefore, denied Plaintiffs' application for preliminary injunction and granted Invest in Arizona's motion to dismiss in part, leaving the petition deficiency challenge pending.

The Court en banc has considered the briefs, authorities, and arguments in this appeal. The Court finds that §§ 13 and 15 of S.B. 1828 do fall within the support and maintenance exception to the Arizona Constitution, and thus may not be referred to the voters. Therefore,

- IT IS ORDERED reversing the trial court's order and remanding the matter to the trial court to enter judgment in accordance with this order.
- IT IS FURTHER ORDERED enjoining R-03-21 from appearing on the 2022 General Election ballot.
- IT IS FURTHER ORDERED denying Invest in Arizona's request for attorneys' fees.

A written opinion explaining our reasons for this order will follow.

DATED this 21st day of April, 2022.

_____/s/
ROBERT BRUTINEL
Chief Justice

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TO:

Kory A Langhofer Thomas J Basile Spencer Garrett Scharff Roopali H Desai D Andrew Gaona Kristen M Yost Timothy Sandefur Daniel J Adelman Samuel Schnarch Erin Adele Scharff Mark Brnovich Joseph A Kanefield Brunn W Roysden III Michael S Catlett Jillian Francis Katherine Cooper Hon Katherine Cooper Alberto Rodriguez Jillian Francis Alicia Moffatt Hon Jeff Fine