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**IN THE SUPREME COURT
OF THE STATE OF ARIZONA**

RICHARD ROACH, JENNIFER)	
McGETTRICK, CARMEN FERRARA,)	No. CV-11-0151-SA
JAMES FORS, DR. EVE SHAPIRO, and EL)	
RIO COMMUNITY HEALTH CENTER,)	
)	
Petitioners,)	
)	
v.)	
)	
JANICE K. BREWER, in her capacity as)	
Governor of the State of Arizona, and TOM)	
BETLACH, in his capacity as Director of the)	
Arizona Health Care Cost Containment)	
System,)	
)	
Respondents.)	

RESPONSE TO PETITION FOR SPECIAL ACTION

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SUMMARY OF ARGUMENT

This case involves fundamental principles of constitutional law. In an audacious effort to create a superior first lien on all Arizona revenues, Petitioners are tacitly asking this Court to order the Legislature to modify other appropriations (such as for education, courts, school facilities, fire suppression, prisons, debt service, and public safety) to pay for the Proposition 204 Expansion Population, without regard to whether such a compelled appropriation would cut core government services or other vital needs.

The separation of powers doctrine, the Arizona Legislature's power to establish the State's annual budget, and express statutory provisions all preclude Petitioners' requested relief. Although Petitioners have filed their special action against the Governor and Director of the Arizona Health Care Cost Containment System ("AHCCCS"), the actual relief they request can only come from the Arizona Legislature, which is the branch of government constitutionally mandated to appropriate state funds.

The voters expanded the AHCCCS program in 2000 by passing Proposition 204. They only appropriated the Arizona Tobacco Litigation Settlement Fund and (through Proposition 303 in the 2002 general election) the Proposition 204 Protection Account, (collectively, the "Tobacco Funds") to pay for the expansion

in the AHCCCS program.¹ The initiative required the Tobacco Funds to be supplemented if necessary by “additional sources” of funds, including legislative appropriations. The drafters of Proposition 204 carefully avoided obligating the Legislature to appropriate undetermined amounts of general fund monies and left to the Legislature the determination of what funding was “available”.

For fiscal year (“FY”) 2012, in the midst of an unprecedented economic crisis, the Legislature passed Senate Bill 1619 (“SB 1619”), which reduced the appropriation for the Proposition 204 Expansion Population because there were not funds available to pay for the program in its entirety given significant increases in this Population, current revenue projections, and other required expenditures necessary to operate state government. SB 1619, 2011 Ariz. Sess. Laws, 1st Reg. Sess., ch. 31

¹ The eligibility level established under Proposition 204 includes “any person who has an income level that, at a minimum, is between zero and one hundred per cent of the federal poverty guidelines.” A.R.S. § 36-2901.01(A). This expanded coverage, which includes various groups above the levels in effect prior to the initiative’s passage, is referred to herein as the “Proposition 204 Expansion Population.” The Proposition 204 Expansion Population includes: childless adults with incomes between zero and one hundred percent of the federal poverty level; parents with incomes from approximately twenty-three percent to one hundred percent of the federal poverty level; and individuals qualifying on the basis of Supplemental Security Income (SSI) with incomes between seventy six and one hundred percent of the federal poverty level. Prior to the passage of Proposition 204, parents and SSI individuals qualified at lower income levels.

Petitioners' request must be denied because the Arizona Legislature is not a party in this matter and, even if it were, such relief would intrude upon the primary and plenary power vested to a co-equal branch of government in violation of the separation of powers doctrine set forth in Article 3 of the Arizona Constitution. Moreover, the Petitioners' legal theory is simply incorrect.

STATEMENT OF FACTS

The Governor and AHCCCS Director (the "Director") agree that there are no material issues of fact in dispute, but vigorously dispute the conclusions that Petitioners' draw from selected references to the 2000 voter publicity pamphlet and other external sources in existence prior to the passage of Proposition 204. Given the clear language of A.R.S. § 36-2901.01(B), references to such extrinsic evidence is irrelevant. However, if such information is to be considered, then it is necessary to reference other sources² of information that were available to the voters casting votes for or against Proposition 204, including the ballot language that was presented to every voter who cast a vote for or against Proposition 204. Petitioners' characterization of the voters' understanding of the funding requirements of Proposition 204 is contradicted by other statements in the same

² Because statements made by advocates for and against Proposition 204 are not relevant, they are not referenced in the Statement of Facts, but rather appear in Section II(E) of the Argument.

pamphlet and the ballot language itself. *See* Appendix in Support of Petition for Special Action (“Pet. App.”), Ex. 10.

A. Undisputed Facts

It is undisputed that the Governor and Director have not been given the funds necessary to provide services to the entire Proposition 204 Expansion Population. The Legislature modified the AHCCCS budget for FY 2012 by over \$500,000,000, which included a reduction of \$207,000,000 for the Proposition 204 Expansion Population. *See* Pet. App., Ex. 4. AHCCCS has established that there is a \$541,000,000 shortfall in funds needed to maintain the status quo in the AHCCCS program. *See* Pet. App., Ex. 2. Petitioners do not maintain that the Governor and Director have funds to provide services to the Proposition 204 Expansion Population nor do they allege that they have improperly expended, or failed to expend, monies that are appropriated.

There is no dispute that Proposition 204 greatly expanded the number of people AHCCCS covers. As Petitioners acknowledge, one in four individuals receive AHCCCS benefits as a result of Proposition 204. *See* Special Action Petition (“Pet.”) at 1-2. This accounts for 28.9% of the lives covered through the

AHCCCS program as of May 2011 (389,380 of 1,348,035 lives).³ The additional expense has been substantial and consumes a greater percentage of the annual state budget. Although the Tobacco Funds are the only specified and appropriated funding sources for the Proposition 204 Expansion Population, they now account for only 6% of the non-federal funds appropriated for the AHCCCS program for FY 2011 (\$148,579,200 of \$2,410,904,600), and only 17% of the non-federal funds used to administer the Proposition 204 Expansion Population program (\$108,211,300 of \$628,387,600).⁴

B. Fiscal Year 2012 Budget

In determining the amount of general fund revenue available to fund Proposition 204, the Arizona Legislature was confronted with multiple, competing demands for state appropriations that far exceeded the general funds available. Although the Legislature previously appropriated enough funding, in addition to the Tobacco Funds, to cover expenditures for Proposition 204, such funding was made at a time when revenues were substantially higher and therefore available for

³ See *AHCCCS Population by Category*, www.azahcccs.gov/reporting/Downloads/PopulationStatistics/2011/June/AHCCCS_Population_by_Category.pdf (last visited June 6, 2011).

⁴ The Tobacco Litigation Settlement Fund accounts for 4.5% and the Proposition 204 Protection Account of the Tobacco Products Tax Fund accounts for 1.7%. *Total AHCCCS Spending on FY2004 to FY2011*, <http://www.azleg.gov/jlbc/AHCCCSHistoricalSpending.pdf> (last visited June 6, 2011).

such use as determined by the Legislature. As late as 2007, the State of Arizona was en route to setting a fiscal record of \$9.5 billion in revenues.⁵

The financial situation in Arizona and the nation, however, took a substantial and dramatic turn for the worse following the record revenues in 2007. By 2010, the State was on the brink of fiscal collapse as a result of the worst economic recession since World War II.⁶ Driven by a 34 percent loss in revenue and a projected 65 percent growth in Medicaid spending, state government faced a projected budget shortfall of \$1.4 billion in FY 2010 and \$3.2 billion in FY 2011.⁷ The FY 2011 projected shortfall equaled 32 percent of projected operating budget for the entire year.⁸

The shift from comfortable budget surpluses to massive deficits did not occur overnight. Shortfalls began to emerge in FY 2008 and FY 2009, as the early effects of the current recession began to be felt. During these first years of budget

⁵ See *The Executive Budget Summary Fiscal Year 2011*, http://www.ospb.state.az.us/documents/2010/FY2011_BudgetSummaryFINAL.pdf (last visited June 18, 2011).

⁶ Business Cycle Dating Committee, National Bureau of Economic Research, <http://www.nber.org/cycles/sept2010.html> (last visited June 18, 2011).

⁷ See *The Executive Budget Summary Fiscal Year 2011*, http://www.ospb.state.az.us/documents/2010/FY2011_BudgetSummaryFINAL.pdf (last visited June 18, 2011).

⁸ *Id.*

problems, the State balanced its budget by drawing down the “rainy day” fund (\$710 million), sweeping dedicated funds (\$1.3 billion), rolling over K-12 payments and other payment deferrals into the next fiscal budget (\$887 million), utilizing temporary federal stimulus monies (\$2.2 billion), incurring lease purchase obligations (\$1.3 billion) and making substantial reductions to the overall budget (\$550 million).⁹

To resolve the FY 2010 and FY 2011 budget deficits, the State took additional steps including, passing a temporary 1 cent sales tax (\$918 million, approved by the voters), providing other revenue enhancements (\$231 million), reducing the budget (\$761 million), taking on additional debt (\$750 million), providing payment deferrals (\$450 million), and sweeping additional dedicated funds (\$488 million).¹⁰

The fiscal crisis confronting Arizona has resulted in substantial cuts to core government services since peak expenditures in FY 2008. These include an 18 percent reduction in K-12 per pupil spending, a 25 percent cut in university student spending, a 19 percent cut in community college spending, a 37 percent reduction in child care enrollees (18,000 children), a 48 percent reduction in the number of

⁹ *Id.*

¹⁰ *State of Arizona FY 2011 Appropriations Report*, pp. BH2-BH3, <http://www.azleg.gov/jlbc/11app/FY2011AppropRpt.pdf> (last visited June 18, 2011).

families on cash assistance (19,000 families), reduced state benefits for the seriously mentally ill, a reduction in AHCCCS provider rates, an elimination of most non-federally mandated Medicaid services, a reduction of the number of children in KidsCare (22,900 children), a 12.9 percent reduction of the non-university state employee workforce, and an 18.9 percent overall reduction of payroll costs.¹¹ Additionally, the State eliminated most general fund support for the Department of Environmental Quality, Arts, Parks, Mines and Minerals, Water Resources, and Tourism.¹²

Despite these efforts, in January 2011, the State faced a projected FY 2011 deficit of \$763.6 million and a FY 2012 projected deficit of \$1.147 billion dollars. To resolve these deficits, the State reduced spending another \$1.2 billion, including a reduction of university support by 22 percent (\$198 million), community college support by 47 percent (\$64 million), employee benefits (\$50 million), and the AHCCCS reductions from SB 1619, at issue in the case.¹³

¹¹ *Arizona Economy and Budget, FY 2011 and FY 2012*, <http://www.azospb.gov/documents/2011/CMS%20Brief%20Final-4> (last visited June 18, 2011).

¹² *Id.* at 40.

¹³ Current budget projections suggest the State may realize revenue growth in excess of the adopted budget. However, cost drivers in the budget including K-12 enrollment, prisoner levels, and capitated populations may also be higher than projected levels. See *State of Arizona May 2011 Revenue Update* www.azleg.gov/jlbc/PreliminaryMayRevenueUpdate.pdf (last visited June 18, (continued...))

C. The AHCCCS Budget

There are three main “drivers” of cost in the AHCCCS program: eligibility standards, the scope of covered services, and provider reimbursement rates. *See* Pet. App., Ex. 2. AHCCCS has used its best efforts in these three areas to contain costs in order to maximize funds available for the provision of services.¹⁴

1. Optional services have been limited or eliminated.

Most AHCCCS services are a mandatory condition of receiving federal financial participation under the federal Medicaid program. 42 U.S.C. § 1396a(a)(10)(A) (2010). Elimination of mandatory services under Medicaid would result in an estimated loss of \$7,575,127,800 in federal funds for the fiscal year ending June 30, 2011. *See* 42 U.S.C. § 1396b(a).¹⁵ This amount equals roughly 75

(...continued)

2011). Even if a budget balance materializes, the State now owes \$2.2 billion in new debt, over \$1.1 billion in deferred payments and has \$553 million in non-Medicaid “suspended” statutory programs. The Legislature will have to prioritize these fiscal pressures against the restoration of Medicaid funding.

¹⁴ AHCCCS estimates that the FY11 Appropriation is \$874.0 million smaller than it otherwise would have been due to actions implemented by the agency including provider reductions, benefit modifications, program freeze/elimination, increase cost sharing, and administrative reductions. *See Arizona Economy and Budget FY 2011 and FY 2012*, <http://azahcccs.gov/reporting/Downloads/BudgetProposals/FY2012/AHCCCSBrieftoCMS2-8-11.pdf> (last visited June 18, 2011).

¹⁵ *See also AHCCCS Fiscal Year 2011 Original Appropriation*, wwwazahcccs.gov/reporting/Downloads/BudgetProposals/FY2011/FY11OriginalAppropriationwithDESandDHS.pdf (last visited June 18, 2011).

percent of the total cost of the program for that year.¹⁶ Consequently, AHCCCS has had to limit or eliminate many optional services to preserve the required core of its program. However, the primary optional services, including pharmacy, home and community based services were not cut because AHCCCS determined that such cuts would increase program costs due to the increased demand for other mandatory services that would result from the cuts.

2. Reimbursement to providers has been reduced.

Reimbursement to providers has been reduced repeatedly since 2009. Inflationary increases to rates have been suspended and reimbursement for certain extraordinary hospital claims was eliminated.¹⁷ There is a limit, both practically and legally, to how much reimbursement may be cut and AHCCCS cannot be funded by further cuts in provider reimbursement.

3. The ability to limit or reduce eligibility is constrained by federal law.

The remaining cost driver is eligibility. Just as there are mandatory services under Medicaid, Arizona is also required to cover certain populations to receive

¹⁶ *AHCCCS Fiscal Year 2011 Original Appropriation*, www.azahcccs.gov/reporting/Downloads/BudgetProposals/FY2011/FY11OriginalAppropwithDESandDHS.pdf (last visited June 18, 2011).

¹⁷ *See* HB 2275, 2008 Ariz. Sess. Laws, 2nd Reg. Sess., ch. 288, § 20; HB 2013, 2009 Ariz. Sess. Laws, 3rd Spec. Sess., ch. 10, § 22; HB 2010, 2010 Ariz. Sess. Laws, 7th Spec. Sess., ch. 10, § 25; SB 1619, 2011 Ariz. Sess. Laws, 1st Reg. Sess., ch. 31 §§ 11, 29, 31, 32.

federal financial participation, including the Section 1931 and SSI populations as they existed prior to Proposition 204. *See* 42 U.S.C. § 1396a(a)(10)(A)(i). The State cannot reduce or terminate the eligibility of these groups, except with federal permission, without losing all federal funding. The Affordable Care Act of 2010 includes “maintenance of effort” provisions that, absent federal permission, preclude such reductions or terminations of those populations through January 1, 2014. 42 U.S.C. § 1396a(gg) (2010). To further reduce costs, AHCCCS has requested that the federal government grant a waiver of the maintenance of effort provision to reduce the income limit for parents in the 1931 Expansion population. *See* Pet. App., Ex. 3. None of the Petitioners fall within these populations.

In addition to the expansion of categorically eligible parents and SSI recipients, the State added an optional eligibility group, the AHCCCS Care or “childless adult” population, through a demonstration project “waiver” agreement with the federal government. Federal financial participation for this population is not permitted under the Medicaid Act, 42 U.S.C. § 1396, but has been allowed by the Secretary under Section 1115 of the Social Security Act, 42 U.S.C. § 1315. As such, the federal government has informed AHCCCS that the State may eliminate

coverage for this group when the State's current "demonstration project" ends on September 30, 2011.¹⁸ Pet. App., Ex. 3.

The Tobacco Funds are the first sources of funding for the Proposition 204 Expansion Population. Pet. App., Ex. 2. However, for FY 2012, those funds will not even be sufficient to cover two of the three groups represented in the Proposition 204 Expansion Population. Constrained by this shortfall:

AHCCCS will use the other funds appropriated by the Legislature to cover: (1) the remainder of the costs associated with the first two Proposition 204 State Plan expansion categories listed above, (2) the costs associated with other eligibility groups listed in the State Plan that are subject to the MOE [maintenance of effort] requirements unless those requirements are waived by the Secretary, and (3) to fund continuation of the AHCCCS Care program if it is closed to new enrollment.

Id.

4. The remaining cost-saving option is to reduce "AHCCCS Care"

AHCCCS has informed the federal government it will not renew the existing AHCCCS Care program effective October 1, 2011 and has, consistent with the terms of the existing waiver, submitted a phase out plan for federal approval. Instead of extending the current demonstration project, AHCCCS has asked for waiver authority to cover childless adults at an income level that can be adjusted as

¹⁸ Communication from CMS indicates that AHCCCS may modify coverage for individuals covered exclusively through the Waiver (e.g., childless adults). *See* Pet. App., Ex. 15 at pp. 5-6.

necessary to maintain a program within State appropriations. Pet. App., Ex. 3. With respect to the persons covered under the current AHCCCS Care program, the plan is to freeze enrollment on July 1, 2011 and establish a more flexible program, effective October 1, 2011, that would reflect the State's ability to provide services based on the appropriated funds available. This plan is conditioned on approval from and, as of the date of this filing, is still being considered by, the federal government. The Director will take no action to implement the freeze until he obtains federal approval.

STATEMENT OF ISSUES

1. Whether this Court has jurisdiction to review the Arizona Legislature's discretionary budget and spending decisions made in deciding which appropriations are available to cover a multitude of competing government obligations and services, including Medicaid coverage for certain individuals.
2. Whether this Court can grant the relief requested even if it accepts jurisdiction.

ARGUMENT

I. SPECIAL ACTION JURISDICTION SHOULD BE DENIED.

Before reaching the merits of Petitioners' claims, this Court must first consider whether the issues presented are proper for judicial resolution. *Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 6, 213 P.3d 671, 674 (2009). Because this Court's

decision to accept special action jurisdiction is highly discretionary, the Court may refuse to consider this Special Action because: (1) the relief requested is not ministerial in nature, thus not proper for mandamus relief; (2) Petitioners lack standing; and (3) the issues are not ripe. *Id.* at 237 ¶ 7; *see also League of Arizona Cities and Towns v. Martin*, 219 Ariz. 556, 558 ¶ 4, 201 P.3d 517, 519 (2009) (decision to accept special action jurisdiction is discretionary).

Petitioners' prayer for relief is styled as a request for declaratory and injunctive relief, but is the functional equivalent of a request for a writ of mandamus requiring the Director to maintain present levels of eligibility and benefits under Proposition 204. *See* Rule 3, Ariz. R. Spec. Act. "Mandamus may compel the performance of a ministerial duty or compel the officer to act in a matter involving discretion, but it may not designate how that discretion shall be exercised." *Kahn v. Thompson*, 185 Ariz. 408, 411, 916 P.2d 1124, 1127 (App. 1997).

Here, the Director's function is not merely ministerial and does not permit only one course of action. The Director must comply with the legislative direction to manage the program with the funds appropriated to his agency and he cannot provide services required by Proposition 204 without funds appropriated for that

purpose. These are hardly ministerial functions and therefore cannot be the subject of mandamus relief from either the Governor or Director.¹⁹

The Petitioners also lack standing and the issues raised are not ripe because none of the Petitioners have been affected by any of the proposed reductions in services as of the date of this filing. Those proposed reductions will not be made until after July 1, 2011, and are contingent upon the implementation of a draft rule and approval from the federal government. Pet. App., Ex. 3. For these reasons, this Court should deny special action jurisdiction in this case.²⁰

II. IF THE COURT ACCEPTS SPECIAL ACTION JURISDICTION, THE REQUESTED RELIEF SHOULD BE DENIED.

A. The Requested Relief Cannot Be Obtained From The Governor Or The Director.

1. The Respondents have no power to alter an appropriation.

The Arizona Constitution mandates that “[n]o money shall be paid out of the state treasury, except in the manner provided by law.” Ariz. Const. art. 9, § 5. This Court has further clarified that “no money can be paid out of the state treasury

¹⁹ Moreover, the Petitioners failure to name the Legislature as a party also deprives this Court of special action jurisdiction. The relief requested by Petitioners can only be obtained from the Arizona Legislature through an increased appropriation. This Court’s original jurisdiction extends only to extraordinary writs of mandamus and injunction to *state officers*, not to the Legislature. Ariz. Const. art. 6, § 5; *see also* Rule 3, Ariz. R. Spec. Act.

²⁰ The Governor and Director concede, however, that the Petitioners may acquire standing, and the issues may become ripe, at some point in the future.

unless the legislature has made a valid appropriation for such purpose and funds are available for the payment of the specific claim.” *Cockrill v. Jordan*, 72 Ariz. 318, 319, 235 P.2d 1009, 1010 (1951); *see also* A.R.S. § 36-2903(P) (limiting AHCCCS spending for health care to the amount appropriated or authorized by A.R.S. § 35-173 for all health care purposes). Thus, the Governor and Director cannot legally provide services to every person eligible to be part of the Proposition 204 Expansion Population unless the Arizona Legislature has made an appropriation to cover such expenses.

The power to appropriate funds is “*exclusively* a legislative function.” *Rios v. Symington*, 172 Ariz. 3, 11, 833 P.2d 20, 28 (1992) (emphasis added); *see also* *LeFebvre v. Callighan*, 33 Ariz. 197, 204, 263 P. 589, 591 (1928) (“all power to appropriate money for public purposes . . . rests in the legislature.”). And, until the Legislature appropriates necessary funds, a “program cannot function.” *Cochise County v. Dandoy*, 116 Ariz. 53, 56, 567 P.2d 1182, 1185 (1977) (Medicaid program delayed by failure of Legislature to appropriate funding); *see also* *Eide v. Frohmiller*, 70 Ariz. 128, 135, 216 P.2d 726, 731 (1950) (absent an appropriation, “the administrative machinery provided for therein cannot function”). The Governor does not have power to alter a legislative appropriation. *Rios*, 172 Ariz. at 10, 833 P.2d at 27. Accordingly, any relief in this case must come from the Arizona Legislature, which has determined that due to other vital public policy

needs, additional funds for the Proposition 204 Expansion Population are not available.²¹

Rather than challenge the Legislature overtly, the Petitioners instead seek an order requiring the Governor and Director to continue coverage for the Proposition 204 Expansion Population without an appropriation to do so. They fail to acknowledge, however, that the Governor and Director cannot provide services without legislative authorization through an appropriation. *See* A.R.S. §§ 35-154, 35-301 and 35-197 (making it illegal to spend money not appropriated); *Millett v. Frohmiller*, 66 Ariz. 339, 344-45, 188 P.2d 457, 461 (1948) (“[o]bligations incurred in the absence of [an appropriation] are null and void rendering the officials incurring them liable on their bonds”). Moreover, Petitioners have no right or legal basis to claim an appropriation is required by Proposition 204.

2. A.R.S. § 1-254 precludes Petitioners’ claim.

Section 1-254, Arizona Revised Statutes, precludes Petitioners’ claim. That statute provides that, “[n]o statute may be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility *or to create*

²¹ Petitioners recognize that the Legislature is the only party that can provide for an appropriation necessary to cover the Proposition 204 Expansion Population. *See* Pet., p. 27 (“AHCCCS has now proposed to meet *the legislature’s requirement* to implement the program within the available funding”); p. 30 (“the *Legislature* has given AHCCCS the authority to change, reduce or terminate eligibility for persons covered under Proposition 204”) (emphasis added).

any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation made for that specific purpose.” (emphasis added). Proposition 204 was passed by the voters subject to the restrictions of A.R.S. § 1-254.²² This statute deprives Petitioners of the right to claim that the Proposition 204 Expansion Population must be funded absent a legislative appropriation.²³ *See also* A.R.S. § 36-2903(P) (mirroring the language of A.R.S. § 1-254 in the AHCCCS administration statute).

The legislative history of section 1-254 clearly shows that it was drafted expressly to prevent future public officials, such as the Governor and Director, from being ordered by a court to provide services where the Legislature has not

²² Had the drafters desired that A.R.S. §§ 1-254 and 36-2903(P) not apply to the provisions of Proposition 204, they should have inserted the standard “notwithstanding any other law” language in each statute added by the measure. *See Calik v. Kongable*, 195 Ariz. 496, 499, 990 P.2d 1055, 1058 (1999) (interpreting the phrase “notwithstanding any law to the contrary” literally). Accordingly, the voters are presumed to have been aware of this pre-existing law when passing Proposition 204. *Ariz. State Bd. Of Dirs. for Junior Colls. v. Phoenix Union High Sch. Dist. Of Maricopa Cnty.*, 102 Ariz. 69, 72, 424 P.2d 819, 822 (1967) (rules of statutory construction presume the legislature is aware of existing law).

²³ In *Arnold v. Arizona Department of Health Services*, 160 Ariz. 593, 594, 775 P.2d 521, 522 (1989), this Court said, in dicta, that the “Legislature must fund whatever programs it has required.” However, *Arnold* is inapplicable to this case because it did not consider whether an appropriation was made or the propriety of the Legislature’s funding. And, *Arnold* was decided before the Legislature enacted A.R.S. § 1-254.

provided funding necessary to support a court order. According to the Senate Fact Sheet,²⁴ the purpose of A.R.S. § 1-254 is to prohibit the:

expenditure of state monies in excess of legislative appropriations made for a specific purpose and [to] prohibit[] construal of any statute so as to impose a duty on an officer, agent, or employee of the state to discharge a responsibility or to create a right in a person or group if the discharge or right requires an expenditure of state monies in excess of [the] amount authorized by appropriation for that specific purpose.

Senate Fact Sheet, S.B. 1143, 42nd Leg., 1st Reg. Sess. (Ariz. 1995), attached as Appendix Exhibit A.

Section 1-254 unequivocally was intended to “eliminate ambiguity in the law by clearly asserting the primacy of the appropriation process . . . thus assuring a sitting legislature maximum flexibility in allocating financial resources to various programs in the context of revenue constraints which confront a sitting legislature in any given fiscal year.” Senate Fact Sheet, S.B. 1143, 42nd Leg., 1st Reg. Sess. Moreover, A.R.S. § 1-254 was made *specifically applicable to AHCCCS*, among other departments and programs. *Id.; see also* A.R.S. § 36-2903(P). Consequently, A.R.S. § 1-254 precludes Petitioners from making a claim against the Governor and Director where the remedy would require either officer to make

²⁴ See *City of Tucson v. Clear Channel Outdoor, Inc.*, 209 Ariz. 544, 559, 105, P.3d 1163, 1178 (2005) (consideration of legislative fact sheets is appropriate to determine legislative intent).

an expenditure that has not been authorized by legislative appropriation for that specific purpose.

The policy behind A.R.S. § 1-254 is further buttressed by the now applicable “Revenue Source Rule,” set forth in Article 9, Section 23 of the Arizona Constitution, which requires that any initiative measure that proposes a mandatory expenditure of state revenues provide for an increased source of non-general fund revenues sufficient to cover the costs of the initiative. This rule allows the Legislature to reduce the established funding source in “any fiscal year” where the identified revenue source “fails to fund the entire mandated expenditure.” Ariz. Const. art. 9, § 23(B).

3. The doctrine of impossibility precludes the requested relief.

Because the Governor and Director cannot make expenditures in excess of the funds appropriated to them, the doctrine of impossibility also prohibits the relief Petitioners seek. This principal was recently recognized by the Arizona Court of Appeals in *Arizona Ass’n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 15, ¶ 28, 219 P.3d 216, 225 (App. 2009), *review denied* (2009), where the court considered the State’s suspension of certain medical services that were funded by State monies that had been reduced as a result of the budget crisis. The court stated, “we have found no legal authority establishing in the individual the right to receive services. . . without regard to the State’s ability to afford those

services.” *Id.* at 15, ¶¶ 28-29, 219 P.3d at 225. Consequently, “state law does not render illegal the Division’s decision to suspend state-only services to the developmentally disabled.” *Id.*

Similarly, the Proposition 204 Expansion Population services are not entitlements, but rather are creatures of state law contingent on there being sufficient monies in the Tobacco Funds and a supplemental discretionary legislative appropriation from additional available funds or federal monies. *See Ramah Navajo School Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1345 (D.C.Cir. 1996) (“if money is not available, it need not be provided, despite a Tribe’s claim that the [federal law] ‘entitles’ it to the funds”). When, as here, a plaintiff seeks an order requiring a state official to perform an act the plaintiff contends is required by law, this Court has recognized a defense of impossibility in a mandamus action. *See Maricopa Cnty. v. State*, 126 Ariz. 362, 363, 616 P.2d 37, 38 (1980) (upholding correction director’s refusal to accept the transfer of prisoners from county jails because the prison system was crowded and he was trying to comply with a federal court order).

The Petitioners argue that the Governor and Director have violated A.R.S. § 36-2901.01(A) by establishing a cap on the number of eligible persons who may enroll in the system. Pet. at 32. This is incorrect both factually and legally. The

Director has prudently moved to limit the program temporarily to reflect the funds that have been appropriated to AHCCCS.

This Court has drawn a clear distinction between an “obligation imposed by a statute with an appropriation to fulfill the obligation.” *Forty-Seventh Leg. v. Napolitano*, 213 Ariz. 482, 488 ¶ 25, 143 P.3d 1023, 1029 (2006). “The utmost that can be claimed for the act under consideration is that it pledges the good faith of the state to the making of an appropriation.” *Crane v. Frohmiller*, 45 Ariz. 490, 498, 45 P.2d 955, 959 (1935). While Proposition 204 may include an obligation to refrain from restrictions on eligibility, that language cannot be construed as an appropriation. In other words, the obligation to “extend coverage to all who meet the financial criterion” assumes the existence of the funds needed to pay for services. *See Pet.* at 32.

The Governor and Director, by temporarily freezing enrollment and seeking permission to manage enrollment to reflect the availability of funds, are acting in accord with the (1) the authorized appropriations (including the Tobacco Funds) and (2) the Legislature’s repeated direction to manage the program in FY 2012 within available appropriations “notwithstanding any other law.” Laws 2011, 1st Spec. Sess., ch. 1, §§ 1 and 2; SB 1619, § 34(A). The Director has left open the option of lifting the freeze if funds become available. There has been no repeal or amendment of A.R.S. § 36-2901.01(A), as suggested by the Petitioners. *See Pima*

Cnty. by City of Tucson v. Maya Const. Co., 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988) (the court will not presume an intent to repeal an earlier statute unless the new statute clearly requires the conclusion that such was the intent of the legislature).

B. The Legislature Acted Within Its Plenary Power In Determining The Amount Of Funds “Available” For Additional Funding Under A.R.S. § 36-2901.01(B).

In ensuring that sufficient monies would be available to provide benefits to pay for the expanded population, Proposition 204 provided that the entire Tobacco Litigation Settlement Fund would be appropriated to the program and *that only those funds would be continuously appropriated*. A.R.S. §§ 36-2901.01(B), 36-2901.02(E)(4). The voters went on to provide that those funds “shall be supplemented, as necessary, by any other *available* sources including legislative appropriations and federal monies.” A.R.S. § 36-2901.01(B) (emphasis added). Proposition 303 subsequently added additional continuously appropriated funds earmarked for the Proposition 204 Expansion Population. A.R.S. §§ 36-770, 36-778.

The voters purposefully did not obligate the Legislature to appropriate future unknown revenues because such a requirement would have been unenforceable. *See Hernandez v. Frohmiller*, 68 Ariz. 242, 253-54, 204 P.2d 854, 862 (1949), discussed *infra*, at Section II(C)(2). The Legislature has appropriated additional

general fund revenues to pay for costs in excess of funds appropriated through the Tobacco Funds when it determined such funds were available.

1. Section 36-2901.01(B) does not appropriate monies other than the Tobacco Litigation Settlement Fund.

Although it has been established that the citizens cannot by initiative obligate the Legislature to annually appropriate an unknown amount of general fund money every year, *Hernandez*, 68 Ariz. at 242, 204 P.2d at 862, even if such a requirement was constitutional, A.R.S. § 36-2901.01(B) does not impose such an obligation on the Legislature.

A complete reading of the language regarding supplementing the Tobacco Funds for the Proposition 204 Expansion Population shows that such funds could come from other sources such as the federal government or “legislative appropriations.” This language makes clear that A.R.S. § 36-2901.01(B) is not an appropriation, but rather sets forth an example of how the Legislature may fund the program in the future if the Tobacco Funds are insufficient *and* the Legislature determines that general fund revenue is otherwise “available” to make such an appropriation. Otherwise, Petitioners are asking the Court to disregard the federal monies or the “other sources” language of the statute. *See Bilke v. State*, 206 Ariz. 462, 464 ¶ 11, 80 P.3d 269, 271 (2003) (“A statute is to be given such an effect that no clause, sentence or word is rendered superfluous, void, contradictory or insignificant.”) (internal citations omitted). The clause “other available sources

including legislative appropriations” is recognition that the statute is precatory and therefore requires further action, such as a subsequent legislative appropriation.

Petitioners appear to argue that Proposition 204 created a non-legislative appropriation of some kind, but the only such appropriation recognized by this Court is an appropriation made in the Arizona Constitution itself. *See Crozier v. Frohmiller*, 65 Ariz. 296, 299-300, 179 P.2d 445, 447-48 (1947) (authorizing the Secretary of State to incur an expenditure for the voter publicity pamphlet without a legislative appropriation because the constitutional language directing the Secretary was “self-executing.”); *see also Millett v. Frohmiller*, 66 Ariz. 339, 347, 188 P.2d 457, 463 (1948) (the real test for determining whether a self-executing appropriation exists is whether the people have expressed an intention for money to be paid for such a purpose in the constitution itself).

Proposition 204 neither amended the Arizona Constitution nor established an appropriation other than for the Tobacco Funds. *See Mecham v. Arizona House of Representatives*, 162 Ariz. 267, 269, 782 P.2d 1160, 1162 (1989) (declining to accept jurisdiction because the applicable constitutional provisions were not “self-executing”).²⁵ Thus, Proposition 204 did not create a constitutional appropriation

²⁵ The voters know how to expressly provide for an appropriation in the Arizona Constitution. *See* Ariz. Const. art. 1, pt. 2, § 1(18) (setting aside an appropriation of \$6 million dollars to the Arizona Independent Redistricting Commission for its initial round of redistricting following the 2000 census).²⁶ The language

(continued...)

that deprives the Legislature the ability to determine the availability of general fund revenue through future appropriations.

Furthermore, the statute cannot be an appropriation because it does not reference a certain sum nor does it authorize the Governor or Director to use money other than the Tobacco Funds. “An appropriation is the setting aside from the public revenue of a *certain sum of money* for a specified object, in such a manner that the *executive officers of the government are authorized to use that money*, and no more, for that object, and no other.” *Rios v. Symington*, 172 Ariz. at 6, 833 P.2d at 23 (emphasis added) (citing *Hunt v. Callaghan*, 32 Ariz. 235, 239, 257 P. 648, 649 (1927)). Although no specific language is necessary, in order for an act to be an appropriation, it must include a “certain sum,” a “specified object” and “authority to spend.” *Rios*, 172 Ariz. at 7, 833 P.2d at 24.

In *Rios*, the Court examined several acts that were and were not appropriations. In examining an act that did not specify in a fiscal year a sum certain, the Court clarified that an act may still be an appropriation even if the Legislature did not specify in a fiscal year a sum certain so long as the specific amount can be ascertained at any given time or can otherwise be made certain. *Id.* at 8, 833 P.2d at 25; see also *Eide v. Frohmiller*, 70 Ariz. 128, 133, 216 P.2d 726, 730 (1950). The specific act the Court examined authorized the creation of a fund

(...continued)

financed by local governments. *Rios*, 172 Ariz. at 8, 833 P.2d at 25. Although the act did not address a specific sum to be used, the amount in each fund could be ascertained and made certain when necessary. *Id.*

Here, the enabling legislation at issue only references the Tobacco Litigation Settlement Fund, a fund with a specific balance that can be ascertained at all times. This fund was established through Proposition 204 as A.R.S. § 36-2901.02, and consists of “all monies that this state receives pursuant to the tobacco litigation master settlement agreement . . . and interest earned on these monies.” *Id.* It has but one use and that use is specifically directed in the statutes in Proposition 204. Moreover, *only* the Tobacco Litigation Settlement Fund is continuously “appropriated” pursuant to the express language of Proposition 204 drafters. A.R.S. § 36-2901.02(E)(2),(4). Similarly, A.R.S. § 36-770 establishes the continuously appropriated Tobacco Products Tax Fund (which directs monies into the Proposition 204 Protection Account, which is allocated for the Proposition 204 Expansion Population).

In contrast, the use of “any other available sources” in A.R.S. § 36-2901.01(B)(2), is not a certain amount, does not include language from which an ascertainable amount can be determined, and does not designate what sources must be available to fund the Proposition 204 Expansion Population. “There is no method by which the amount attempted to be appropriated can be made certain”

and the “amount attempted to be appropriated resides wholly within the realm of speculation.” *Eide*, 70 Ariz. at 133, 216 P.2d at 730; *see also Rios*, 172 Ariz. at 6-7, 833 P.2d at 23-24. Therefore, A.R.S. § 36-2901.01 is not an appropriation under *Eide* or *Rios*. *See also Crane*, 45 Ariz. at 498, 45 P.2d at 959. (a promise to appropriate is not an appropriation and cannot be deemed to require an appropriation).²⁶

The fundamental requirement that a sum certain be ascertained in order to qualify as an appropriation is necessary to provide future Legislatures the ability to budget for the future needs and requirements of the State in an unencumbered and unrestrained manner. Committing future Legislatures to fund a program whose future costs could consume the budget or come at the expense of other constitutional funding obligations necessary to protect the public health, safety and welfare²⁷, would also run afoul of the principle that one Legislature cannot bind

²⁷ There are certain obligations established in the Arizona Constitution that must be funded by the Arizona Legislature every fiscal year. *See, e.g.*, Ariz. Const. art. 9, § 3, (“[t]he legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the necessary ordinary expenses of the state for each fiscal year.”). These include expenditures to fund the operation of the judicial branch, the kindergarten through university education system, prisons, and mine regulation. *See* Ariz. Const. art. 6, §§ 1, 33 (establishing judiciary and fixing judicial salaries); Ariz. Const. art. 11, § 1 (establishing public school system); Ariz. Const. art. 22, § 15 (establishing correctional and other institutions); and Ariz. Const. art. 19 (establishing mine inspector). These expenditures are required to preserve the public peace, health, and safety, and to provide for the support and
(continued...)

another. See *Arizona Tax Commission v. Dairy & Consumers Co-op. Ass'n*, 70 Ariz. 7, 13, 215 P.2d 235, 239 (1950); *Frohmler v. J. D. Halstead Lumber Co.*, 34 Ariz. 425, 429, 272 P. 95, 96 (1928); *Higgins' Estate v. Hubbs*, 31 Ariz. 252, 264, 252 P. 515, 519 (1926).

Petitioners appear to argue that Proposition 204 implicitly requires the Legislature to make such an appropriation. However, this interpretation is improper because the Legislature cannot pass a law that exposes the State to unlimited liability. Legislation that creates a “blank check upon the general fund” is “unconstitutional, invalid, and of no effect whatsoever.” *Crane*, 45, Ariz. At 500, 45 P. 2d at 960.

In *Cockrill v. Jordan*, 72 Ariz. 318, 319, 235 P.2d 1009, 1010 (1951), this Court held:

There are certain definite and well-defined rules to test the validity of appropriations. No rule is better settled than that to constitute a valid appropriation payable out of the general fund the Act must fix a maximum limit as to the amount that can be drawn under it. If this was not the law there would be no limit to the amount of money that could be drawn thereunder and the public treasury would be wholly unprotected against claims of an undetermined amount. Furthermore the state government would never be able to ascertain with any degree of certainty where it stood financially.

(Internal citations omitted).

(...continued)

maintenance of the departments of the State and of State institutions and are superior to any other obligation created by law.

The Arizona Constitution prohibits the people from passing any law by initiative that the Legislature cannot pass. Ariz. Const. art. 22, § 14 (“[a]ny law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people”). Any theory that the initiative created a general, continuing appropriation fails for lack of a “certain sum” and a “maximum limit” of an obligation by which future legislatures are to be bound.

Proposition 204 also fails the third requirement of the *Rios* test for establishing an appropriation to fund the Proposition 204 Expansion Population beyond the Tobacco Funds because it does not provide any express authorization to the Governor or Director to make such an expenditure. An appropriation must not only set aside a certain sum of money from the public revenue, it must also authorize the executive officer “to use that money.” *Rios*, 172 Ariz. at 6, 833 P.2d at 23. As established, neither the Director nor the Governor has the authority to supplement the Tobacco Funds until and unless there are “legislative appropriations [or] federal monies.” A.R.S. § 36-2901.01(B).

2. The Legislature has discretion under A.R.S. § 36-2901.01(B) to determine whether to appropriate additional funding for expenditures not covered by the Tobacco Funds.

The Petitioners fail to establish how the word “available,” as set forth in A.R.S. § 36-2901.01(B), can be interpreted to require the Legislature to annually appropriate an undetermined amount of funding to pay for the Proposition 204

Expansion Population. The word “available” does *not* mean “any” or “all” revenues that are deposited in the general fund. “Available” means “able to be used or obtained; at someone’s disposal.” *Available Definition*, Oxford English Dictionary, <http://oxforddictionaries.com/definition/available?region=us> (last visited June 14, 2011); *see also State v. Wise*, 137 Ariz. 468, 470 n.3, 671 P.2d 909, 911 n.3 (1983) (court may refer “to an established, widely respected dictionary for the ordinary meaning” to ascertain a word’s meaning.); *see also* A.R.S. § 1-213 (“[w]ords and phrases shall be construed according to the common and approved use of the language.”). Thus, the determination of whether general fund revenues are available to be used or obtained to supplement the Tobacco Funds is solely within the discretion of the Legislature to decide.

Contrary to the Petitioners’ implication, A.R.S. § 36-2901(B) does not require the Legislature to raise taxes or sell State resources to *create* a source of “available” funds. Nor does not it create an obligation to fund the Proposition 204 Expansion Population “notwithstanding any other law,”²⁸ or require such funding

²⁸ In addition to failing to circumscribe the mandate of A.R.S. § 1-254, the drafters could have sought to encumber every possible source of State funds and make other State needs secondary until Proposition 204 was fully funded. For example, since at least two years before Proposition 204 the Legislature has routinely ensured that the counties provide their allocation to the AHCCCS program with a comprehensive proviso that: “If the monies the state treasurer withholds are insufficient to meet that county’s funding requirement as specified in subsection A of this section, *the state treasurer shall withhold from any other monies payable to* (continued...) ”

even if the Legislature determines that other funding obligations are necessary to protect the public health, safety and welfare. The plain reading of the statute is that the Tobacco Funds may be supplemented, if the Legislature decides that other sources of funding are available for that purpose.

Initiatives are presumed to be constitutional, and “where alternative constructions are available, the court should choose the one that results in constitutionality.” *Ruiz v. Hull*, 191 Ariz. 441, 448, 957 P.2d 984, 991 (1998). The Petitioners’ construction of A.R.S. § 36-2901.01(B) gives no meaning to the word “available” as a limitation on the obligations created by Proposition 204. In fact, Petitioners are asking the Court to instead interpret Proposition 204 as creating a superior first lien and an open-ended black hole in the State budget that sweeps up all State funds, regardless of other State needs or priorities, until its purposes are served. As discussed, this position would render the initiative unconstitutional. Moreover, such an interpretation is not supported by the text of the statutes, ballot language or publicity pamphlet presented to voters prior to the 2000 election. *See infra* Section II(E).

(...continued)

that county from whatever state funding source is available an amount necessary to fulfill that county’s requirement.” Laws 1998, 4th Spec. Sess., ch. 5, § 5(B) (emphasis added).

Taken to its logical conclusion, if the Court were to follow the Petitioners' wishes for judicial intervention to command appropriations, the Legislature would then have to constantly appropriate or re-allocate funds to satisfy the changing number of Proposition 204 Expansion Population participants every fiscal year. The courts would then be asked to constantly monitor and compel the Legislature to appropriate funds to cover a continuously fluctuating population. Such a result is not only unwieldy, it crosses the line that separate the two branches. *See infra* Section II(C). It also demonstrates why an appropriation has to be plainly authorized, certain, and for a specified sum. Otherwise, there is no certainty in the budget process.

By contrast, the Legislature has appropriately read A.R.S. § 36-2901.01(B) to require supplementation of the Tobacco Funds only with "available" funds as determined by the Legislature after balancing other competing issues of importance.²⁹ The Director has been commanded by the Legislature to manage AHCCCS within available appropriations "notwithstanding any other law." Pet. App., Ex. 1, Senate Bill 1619, § 34A. More specifically, he was expressly directed to implement a program "within the monies available" from the Tobacco Funds and such other funds as may be "made available" *either* from legislative

²⁹ *See supra* note 23.

appropriations or federal funds. SB 1001, 2011 Ariz. Sess. Laws, 1st Spec. Sess., ch. 1. If those sources are insufficient, the Director is permitted to suspend eligibility or programs. Thus, when funds are not available, the Governor's and Director's jobs are to do exactly what they are doing: seek federal authority to manage the program with the funds that are available, which may include freezing, limiting, or terminating expanded populations not required to be covered as a condition of receiving Medicaid funds for the core program for the categorically eligible.

C. The Requested Relief Violates The Separation Of Powers Doctrine Set Forth In Article 3 Of The Arizona Constitution.

1. The Legislature is vested with the power of the purse.

Although Petitioners ask for relief against the Governor and Director, the relief they seek can only be obtained by directing the Legislature to appropriate more money to fund services for the Proposition 204 Expansion Population than it determined were otherwise available for FY 2012. Thus, this Court is being asked to revisit the FY 2012 budget and second-guess the Legislature. The Court should refrain from encroaching upon this constitutional task assigned to the Legislature.

The Separation of Powers clause of the Arizona Constitution expressly prohibits one branch of government from intruding into or “exercis[ing] the powers properly belonging to” another branch. Ariz. Const. art. 3. In *League of Arizona Cities & Towns v. Brewer*, 213 Ariz. 557, 559 ¶ 8, 146 P.3d 58, 60 (2006), this

Court noted that “[w]e have consistently interpreted this clause to require the judiciary to refrain from interfering with the legislative process.”

The Legislature has broad powers to decide how state funds are prioritized and used. Ariz. Const. art. 4, pt. 2, § 20; *Whitney v. Bolin*, 85 Ariz. 44, 47, 330 P.2d 1003, 1004 (1958) (“the power of the legislature is plenary and unless that power is limited by express or inferential provisions of the Constitution, the legislature may enact any law which in its discretion it may desire.”); *see also Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 519-20, ¶ 10, 1 P.3d 706, 709-10 (2000) (legislature’s powers are limited only by prohibitions in the state and federal constitutions). When a legislative enactment is challenged, the courts “must find that the [a]ct is clearly prohibited by either the Federal Constitution or the Constitution of Arizona in order to hold it invalid.” *Earhart v. Frohmiller*, 65 Ariz. 221, 225, 178 P.2d 436, 438 (1947).

The Arizona Constitution assigns the task of budgeting exclusively to the Legislature:

Under our system of government, all power to appropriate money for public purposes or to incur any indebtedness therefor . . . rests in the Legislature.” (quoting *LeFebvre v. Callaghan*, 33 Ariz. 197, 204, 263 P. 589, 591 (1928)). The Legislature, in the exercise of its lawmaking power, establishes state policies and priorities and, through the appropriation power, gives those policies and priorities effect.

Rios, 172 Ariz. at 6, 833 P.2d at 23; *see also Prideaux v. Frohmiller*, 47 Ariz. 347, 357-58, 56 P.2d 628, 632 (1936).

The Arizona Legislature is required to establish an annual budget commencing on the first day of July each year to set forth the necessary ordinary expenses of the State. Ariz. Const. art. 9, §§ 3, 4; *see also* Ariz. Const. art. 4, pt. 2, § 20 (establishing the requirements of the general appropriations bill). This Court has noted the significance of the budget bill in relation to all other legislation. In *Sellers v. Frohmiller*, 42 Ariz. 239, 246, 24 P.2d 666, 669 (1933), the general appropriations bill was described as “not in the true sense of the term legislation,” but rather “merely a setting apart of the funds necessary for the use and maintenance of the . . . state government already in existence and functioning.” Moreover, budget legislation becomes effective immediately and is not subject to referendum because of the necessity of passing appropriations legislation every year. *See* Ariz. Const. art. 4, pt. 1, § 1(3); Ariz. Const. art. 4, pt. 2, § 20.

Because the power to appropriate money for public purposes rests exclusively with the Legislature, this Court should refrain from interfering with the legislative process by ordering the Governor and Director to spend in excess of the appropriation provided to AHCCCS by the Legislature, which is the only effective way for the Petitioners to obtain the relief they seek.

The Petitioners’ argument that the “Voter Protection Act” as set forth in Article 4, Part 1, Section 1(6) of the Arizona Constitution obligates the Legislature to fund coverage for the entire Proposition 204 Expansion Population conflicts

with the Legislature’s fundamental constitutional and discretionary authority to budget for the “necessary ordinary expenses of the state each fiscal year” as provided in Article 9, Section 3 of the Arizona Constitution. The Court will interpret constitutional provisions to avoid a conflict whenever possible. *Ruiz v. Hull*, 191 Ariz. at 448 ¶ 24, 957 P.2d at 991. Any such conflict, however, is easily resolved because the Legislature did not repeal or amend any portion of A.R.S. § 36-2901.01(B) in passing the FY 2012 budget when it determined how much general fund revenue, in addition to the continuously appropriated money from the Tobacco Funds, was available to further fund the Proposition 204 Expansion Population.

Petitioners citation to *Arizona Early Childhood Development & Health Board v. Brewer*, 221 Ariz. 467, 212 P.3d 805 (2009), is unhelpful. That case involved a challenge to the Legislature’s sweep of \$7 million of interest on tobacco tax funds that were set aside by the voters in 2006 to fund the Early Childhood Initiative. This Court held that sweeping the interest, earned on money already appropriated, into the general fund violated Article 4, Part 1, Section 1(6)(D) of the Arizona Constitution, because the act diverted monies (appropriated money and the interest earned on it) that were expressly dedicated to the program without a three-fourths vote of each house and not in furtherance of the measure’s purpose. *Id.* at 471-72 ¶¶ 17-18, 212 P.3d at 809-10. That case is wholly inapposite because

Petitioners do not allege that the Legislature, Governor or Director swept or diverted any funds that were specifically appropriated to fund the Proposition 204 Expansion Population.

2. The Legislature’s determination of what funds were “available” under A.R.S. § 36-2901.01(B) presents a nonjusticiable political question.

Relief also should be denied because Petitioners raise a nonjusticiable political question. This Court recently noted that “[e]ven if a case is within a court’s subject matter jurisdiction and is timely brought by a party with standing, a court should abstain from judicial review of the merits if the issue is properly decided by one of the ‘political branches’ of government.” *Brewer v. Burns*, 222 Ariz. at 238, ¶16, 213 P.3d at 675. This guiding principle was further articulated by this Court in *Rios*: “[I]t would be a serious mistake to interpret our acceptance of jurisdiction in this cause as a general willingness to thrust the Court into the political arena and referee on [an annual] basis the assertions of the power of the executive and legislative branches in the appropriations act . . . [F]uture attempts to invoke this Court’s jurisdiction on similar grounds will be viewed with great circumspection.” *Rios*, 172 Ariz. at 5, 833 P.2d at 22 (*quoting Brown v. Firestone*, 382 So.2d 654, 671 (Fla. 1980)).

A controversy is nonjusticiable if it involves a political question, “where there is ‘a textually demonstrable constitutional commitment of the issue to a

coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Kromko v. Arizona Board of Regents*, 216 Ariz. 190, 192 ¶ 11, 165 P.3d 168, 170 (2007) (citations omitted). The political question doctrine springs from the fundamental separation of powers requirement under Article 3 of the Arizona Constitution, which provides that the departments (branches) of our state government “shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.” *Id.*; see also *Mecham v. Gordon*, 156 Ariz. 297, 300, 751 P.2d 957, 960 (1988) (“Nowhere in the United States is [separation of powers] more explicitly and firmly expressed than in Arizona.”).

Here, the power to budget is constitutionally committed to the Legislature and there are no judicially discoverable and manageable standards for resolving a dispute involving the manner in which the Legislature decides what general fund monies are available for competing public policy issues. In distinguishing the facts at issue in *Brewer v. Burns*, this Court drew an analogy to the exact situation presented here in noting that such a scenario would present a nonjusticiable political question. 222 Ariz. at 238, 213 P.3d at 675. The Court said, “[t]he issue [in *Brewer v. Burns*] is not whether the Legislature should include particular items in a budget or enact particular legislation. Such issues ... clearly are political

questions.” *Id.* at 239 ¶ 21, 213 P.3d at 676 (citing *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485 ¶ 7, 143 P.3d 1023, 1026 (2006)).

This Court long ago concluded that it has no legal method of compelling the legislature to create an appropriation. *Hernandez v. Frohmiller*, 68 Ariz. at 253-54, 204 P.2d at 862. In *Hernandez*, the Court found a 1948 citizen initiative ordering the Legislature to annually appropriate a sum not less than one per cent of the preceding fiscal year payroll to fund a newly created civil service board to be a “waste of printer’s ink.” The Court found that it is the “constitutional duty of the legislature without specific direction to make all necessary appropriations to pay the expenses of state agencies.” *Id.* at 253, 204 P.2d at 862. Importantly, this Court held that “[t]here is no legal method of compelling the legislature to act” to make such an appropriation as directed by the citizen initiative.” *Id.* at 254, 204 P.2d at 862; *see also Reinhold v. Board of Supervisors of Navajo County*, 139 Ariz. 227, 232, 677 P.2d 1335, 1340 (App. 1984) (“neither may the judiciary encroach upon the legislative function, and budgeting matters are a part of such a function.”).

Even if the Court took the unprecedented step and decided it could examine the budget and order the Legislature to reallocate certain appropriations in this case, there are no judicially discoverable and manageable standards to apply in making such determinations. The Court reached this conclusion in *Kromko*, when

it was asked to determine whether a tuition increase by the Board of Regents violated the constitutional requirement that university education be “as nearly free as possible.” The Court ultimately abstained because the issue was a political question that would have required it either to question discretionary budget and spending decisions delegated to the Board or question whether the Legislature should appropriate more funding so as to make university education less expensive. *Kromko*, 216 Ariz. at 194-95 ¶¶ 22-23, 165 P.3d at 172-73.

Here, the Petitioners do not challenge the Director’s expenditures nor any specific act of the Governor. Rather, they question whether the Legislature acted within the scope of its discretionary budget and spending powers in determining which general funds were “available” to supplement the Tobacco Funds to cover the Proposition 204 Expansion Population. As in *Kromko*, there are no “judicially discoverable and manageable standards” available for the Court to intervene and decide when and what specific funds are “available” and how they should be appropriated by the Legislature. *See Rios*, 172 Ariz. at 6, 833 P.2d at 23 (“The Legislature, in the exercise of its lawmaking power, establishes state policies and priorities and, through the appropriation power, gives those policies and priorities effect.”)

Even if the voters had indeed intended Proposition 204 to be paramount to all other State needs, the Petitioners do not identify any funds from which the

expenditures should be taken and transferred to AHCCCS. This would inappropriately require the Court to either order the Legislature to appropriate over \$200,000,000 of monies that simply do not exist or reallocate the money from some other appropriated general fund expenditure for FY 2012 contrary to the determination of the Legislature.³⁰

D. This Court Should Not Immerse Itself In The Legislative Budget Process.

Because there is a “textually demonstrable constitutional commitment of the [power to appropriate] to a coordinate political department” and because the Court is ill-equipped to make such legislative budget choices, the Court should decline the Petitioners’ request to interfere in matters the Constitution entrusts to the Legislature. *Kromko*, 216 Ariz. at 193, ¶¶ 13-14, 165 P.3d at 171. The Governor and Director cannot provide services without funds and compelling them to provide services to the entire Proposition 204 Expansion Population would require the Court to (1) order the Governor and Director to violate Arizona law and spend monies not appropriated, or (2) direct the Legislature to convene and appropriate

³⁰ The only other option would be to order the Legislature to raise revenue, which would violate the separation of powers doctrine as this is a task the Arizona Constitution assigns exclusively to the Arizona Legislature to exercise at its discretion. Ariz. Const. art. 9, § 4 (“[w]henver the expenses of any fiscal year shall exceed the income, the legislature *may* provide for levying a tax for the ensuing fiscal year sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year”) (emphasis added).

funding apparently as determined only by the Petitioners. To do that would be a striking departure from the doctrine of separation of powers and would insert the Court as a referee into disputes over *every* legislative choice between Proposition 204 and every other State need. It is for these reasons that this Court has carefully chosen not to “thrust [itself] into the political arena” to referee how the Legislature determines the State’s budget priorities. *See Rios*, 172 Ariz. at 5, 833 P.2d at 22.

E. The Express Wording Of The Proposition 204 Ballot Language And Extrinsic Evidence Supports The Legislature’s Actions.

Petitioners dedicate a substantial portion of their petition arguing that the voters, when passing Proposition 204, intended to obligate the Legislature to appropriate an unknown amount of funds each year to cover all Proposition 204 Expansion Population expenses not covered by the Tobacco Funds. This argument is based primarily on selected references to the voter publicity pamphlet and other external references. Pet. at 21-23, 38. Such references, however, are irrelevant when interpreting A.R.S. § 36-2901.01(B), because its language clearly and unambiguously provides the Legislature the discretion to determine whether general fund revenue is “available” to cover such expenditures. *State v. Wagstaff*, 164 Ariz. 485, 490, 794 P.2d 118, 123 (1990) (if a statute is not ambiguous, it must be interpreted according to its plain meaning); *State v. Sweet*, 143 Ariz. 266, 269, 693 P.2d 921, 924 (1985) (the best and most reliable index of a statute’s meaning is its language); *see supra* Section II(B).

Notwithstanding the above, the various contrary and non-binding opinions in the voter publicity pamphlet did not clearly inform the voters about what would happen if the Tobacco Funds proved to be insufficient. *Healthy Ariz. Initiative PAC v. Groscost*, 199 Ariz. 75, 79 ¶ 16, 13 P.3d 1192, 1196 (2000) (Martone, J., dissenting) (The voter publicity pamphlet describing Proposition 204 “fails to advise the voter of the possibility that the tobacco settlement fund will be inadequate to fund this new mandate.”). Significantly, the Petitioners failed to cite the Proposition 204 ballot language, which expressly provided that *only* the Tobacco Funds would be used to fund the Proposition 204 Expansion Population.

Section 19-125(D), Arizona Revised Statutes, requires that the official ballot for an initiative include a summary of the principal provisions of the measure, prepared by the Secretary of State, including the effects of “yes” and “no” votes, consisting of “a brief phrase, approved by the attorney general, stating the *essential* change in the existing law should the measure receive a majority of votes cast in that particular manner.” (Emphasis added). For Proposition 204, the “yes” language expressly provided that the proposition only would be funded “with tobacco litigation settlement money.” Pet. App., Ex. 10, p. 166. The ballot language did not reference the general fund. Nor did it remotely suggest that Proposition 204 would create a superior first lien on the general fund that

“earmarked” a substantial portion of the fund in perpetuity at the expense of all other state funded programs if the Tobacco Funds became insufficient. *Id.*

Thus, the language that every voter read before casting a vote for or against Proposition 204 did not warn of, let alone suggest, the “essential changes to existing law” that the Petitioners now claim to have been made by the initiative. *See* A.R.S § 19-125(D). The language certainly did not suggest that voters were actually choosing to affirmatively mandate that other vital public policy spending such as education, court administration, prisons, fire suppression, and public safety were being subjected to inferior budgetary status and that the Proposition 204 Expansion Population funding was to be the top spending priority in Arizona in perpetuity. Had this been the understanding of the voters, the measure may very well have been defeated.

Similarly, in the Proposition 204 publicity pamphlet, the proponents offered no discussion of what might happen if supplemental funds might be unavailable. In fact, the only discussion of “available” funds was from proponents who suggested that the Tobacco Funds would cover the entire cost and there would be money leftover in the fund to pay for other optional programs:

- “Any monies left from the Tobacco Litigation Settlement after implementation of Healthy Arizona would be available for other health needs.” Ariz. Sec’y of State 2000 Publicity Pamphlet at 163 (Co-Presidents of the Arizona Coalition for Human Services), attached as Appendix Exhibit B.

- “[T]his initiative will produce federal matching funds (a return of our tax dollars) and leave settlement money to be spent for other programs.” *Id.* (Emphasis added.)
- *[W]e have the funds available without raising taxes to do what Arizona voters have already demanded.” Id. at 164 (comment of Marion Levett) (emphasis in original).*

Surprisingly, the proponents of Proposition 204 distributed campaign literature that avowed Proposition 204:

- would be “fully funded by Arizona’s share of the Tobacco Settlement”
- would leave “plenty of Tobacco Settlement funds for other healthcare programs in the future”
- would be an “economically painless choice for Arizona”
- would “use[] no state tax money” and “not raise taxes”

See Healthy Arizona Initiative 2 campaign materials, attached as Appendix Exhibit C.³¹ These proponents even went so far as to assure voters that “taxes will not need to be raised to cover the program” and “not only does Prop. 204 not ‘break the bank’ as some have said, but leaves money for other healthcare programs.” *Id.*

It is unwarranted to conclude from the ballot language, the voter publicity pamphlet or the proponents’ own campaign literature that the voters intended to

³¹ According to the A.R.S. § 16-912.01 disclaimer at the bottom of the campaign materials, Petitioner Eve Shapiro served as the Healthy Arizona Initiative 2 campaign chair, and El Rio Santa Cruz Neighborhood Health Center (an affiliate of Petitioner El Rio Community Health Center) was a major funding source for the campaign.

impose a far-reaching and undisclosed budgetary impact as now advocated by Petitioners. To support their argument, Petitioners cite a handful of statements by opponents of the initiative who expressed concern that someday Proposition 204 may become a costly burden. Petitioners curiously argue that the voters must have understood that Proposition 204 would become a costly burden to the State because “the proponents of the initiative did not challenge” these statements. Pet. at 23. However, as established above, the proponents own campaign literature expressed their position that not only would the costs of Proposition 204 be covered entirely by the Tobacco Funds, but that there would be plenty of money leftover for other healthcare programs. *See* Appendix Exhibit B. This is a far cry from warning the public of the mandatory, inflexible liability the Petitioners now assert. Absent any affirmative argument from the proponents, including textual support, that the initiative would bind the State to fund Proposition 204 whatever the consequences, there is no basis to ascribe such intent to the voters and the Petitioners’ efforts to do so should be rejected.


CONCLUSION

The changes the Governor and Director have proposed to the AHCCCS program, pursuant to the direction of and appropriations allocated by the Legislature, are reasonable and unquestionably necessary considering the fiscal crisis that no one predicted when Proposition 204 was passed in 2000. Although

Petitioners understandably prefer coverage for the Proposition 204 Expansion Population be funded in its entirety, the Arizona Legislature, within its sole discretion and authority, determined that there were not “available funds” sufficient to cover the entire eligible population and other programs and issues.

For the reasons stated above, this Court should decline Petitioners’ invitation to encroach upon the plenary power of the Arizona Legislature and second-guess the difficult budgetary decisions it has had to make. Consequently, this Court should deny special action jurisdiction or accept jurisdiction and deny the relief requested.


RESPECTFULLY SUBMITTED this 21st day of June, 2011.



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(e) of the Arizona Rules of Special Actions, I certify that the body of the attached Response appears in proportionally spaced type of 14 points, is double-spaced using a Roman font, and contains 9,876 words from the Summary of Argument to Conclusion.



Jaclyn Foutz

CERTIFICATE OF FILINGS AND SERVICE

The original and seven copies of the foregoing were filed by delivery to the Clerk, Arizona Supreme Court, 1501 West Washington Street, Phoenix, Arizona 85007 and one copy of the Response was served on June 21, 2011 by Federal Express to the following:

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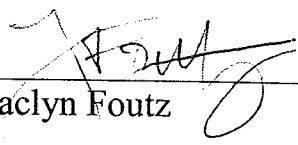
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APPENDIX TO RESPONSE TO SPECIAL ACTION PETITION

INDEX

- Exhibit A. Senate Fact Sheet, S.B. 1143, 42nd Leg., 1st Reg. Sess. (Ariz. 1995)
- Exhibit B. Ariz. Sec'y of State 2000 Publicity Pamphlet
- Exhibit C. Healthy Arizona Initiative 2 campaign materials

EXHIBIT A



For Committee on

APPKUR

For Caucus and Floor Action



As Passed by the Senate



ARIZONA STATE SENATE
Phoenix, Arizona

FINAL REVISED

FACT SHEET FOR S.B. 1143

program funding: limitations: applications

Purpose:

To more clearly define the relationship of the appropriations process to statutory funding formulas by prohibiting expenditure of state monies in excess of legislative appropriations made for a specific purpose and prohibiting construal of any statute so as to impose a duty on an officer, agent or employee of the state to discharge a responsibility or to create a right in a person or group if the discharge or right requires an expenditure of state monies in excess of amount authorized by appropriation for that specific purpose.

Background:

This bill is analogous to S.B. 1209 from the 1994 legislative session. It evolved from recommendations of the Joint Committee on Statutory Funding Formulas which sat in the summer and autumn of 1993. It also incorporates minor changes and certain amendments which were incorporated into the bill during the Second Session of the 41st Legislature.

Among the factors driving this bill is the concern that in the absence of legislation certain ambiguities remain in the law between the appropriations authority of any sitting legislature and statutory funding formulas which have been placed in statute by previous legislatures. Without the unambiguous limitation on statutory entitlements provided by this bill an inherent conflict remains in the law which invites litigation and the potential for judicial preemption of the authority of any sitting legislature.

In response to these concerns the bill attempts to eliminate ambiguity in the law by clearly asserting the primacy of the appropriations process over statutory funding formulas thus assuring a sitting legislature maximum flexibility in allocating financial resources to various programs in the context of revenue constraints which confront a sitting legislature in any given fiscal year. Furthermore, the bill attempts to establish that funding formulas are for the most part a guideline and a tool to assist legislative allocation of limited financial resources, rather than a mandate imposed in law by a previous legislature which rigidly binds each successive legislature into perpetuity.

Provisions:

1. Prohibits as a general provision of law construal of any statute to impose a duty on officers, agents or employees of the state to discharge a responsibility which would require expenditure of state monies in excess of expenditures authorized by appropriation for the specific purpose. (1-254)
2. Prohibits as a general provision of law construal of a statute to create any right in a person or group which would require expenditure of state monies in excess of expenditures authorized by appropriation for the specific purpose. (1-254)
3. Requires the responsible official for each budget unit to monitor monthly reports of the Department of Administration to assure that projected expenditures of the budget unit do not exceed the amounts appropriated or authorized by section 35-173 for that purpose. Requires the responsible official to explain the cause of any projected deficiencies within ten days to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chairman of the Joint Legislative Budget Committee and to commit to a progress report if the projected deficiency changes substantially. If requested by the above recipients, requires the responsible official to develop a plan to assure resolution of the deficiency without supplemental appropriation and to explain the policy and programmatic implications of the plan. (35-131)
4. Specifically applies the prohibitions imposed by provisions #1 and #2 to the following functions, departments and programs in relevant statutes.

AGENCY (SECTION NUMBER)

AHCCCS

Health Care (36-2903)
Long Term Care (36-2932)

Community College Districts

Operating State Aid (15-1466)

Economic Security - Department of

Child Support Enforcement (46-406)
Childrens' Comprehensive Medical & Dental Care (8-512)
Foster Care (46-134)
General Assistance (46-231)
Supplemental payments (46-252)
Aid to Families with Dependent Children (46-291)

Education - General

Equalization Assistance (15-971)
Additional State Aid to School Districts ("Homeowners' Rebate") (15-972)

Education (K-12) - State Board

Apportionment of State Aid (15-973)
Career Ladders (15-918)
Permanent Education Voucher Fund

Education (K-12) - Superintendent of Public Instruction

Special education vouchers (15-1202)
Certificates of Educational Convenience (15-825)

Health Services - Department of

Childrens' Rehabilitative Services (36-261)
Mental Health Services (36-502)

5. ~~Makes consideration of the pay equity study required by section 15-1331, ARS, for development of the budget for certified personnel of ASDB permissive rather than mandatory for JLBC.~~
6. Determines operating state aid for community colleges by applying the growth factor and FTSE growth to the prior year appropriation, but subjects the aid to appropriation.
7. Subjects equalization aid funding formulas for community colleges to appropriation. (15-1468)
8. Decouples Aid to Families with Dependent Children from annual adjustments to the federal poverty level (FPL) and freezes AFDC at not less than thirty-six percent of the 1992 federal poverty level. Effective retroactively to July 1, 1991. (46-207.01)
9. Makes adjustments in the K-12 base level subject to growth rates prescribed by law, subject to appropriation and eliminates the GDP deflator as the inflationary growth component of K-12 funding formulas including CORL and CLRL. (15-901 15-961 and 15-962)
10. Prohibits construal of this act to affect, limit or expand in any manner any existing or established court decisions or case law.

Amendments Adopted by Committee of the Whole

1. Reestablishes the equalization aid funding formula for community colleges.

FACT SHEET

S.B. 1143 - Final Revised

Page 4

Amendments Adopted by the House of Representatives

1. Makes technical conforming changes to Laws 1994, 9th Special Session, Chapter 1 and to Laws 1995, Chapter 1.
2. Requires that the Capital Levy Revenue Limit (CLRL) (15-962), the Capital Outlay Revenue Limit (CORL) (15-961) for K-12 funding be adjusted by the growth rate prescribed by law for the base level, subject to appropriation. (Section 15-901, subsection B, paragraph 2, subdivision (b)).
3. Updates the K-12 base level to \$2,458.47 for FY 1994-1995.
4. Reestablishes the formulas for adjustment of prior year operating state aid for the community colleges (15-1466) by full time equivalent student enrollment and the K-12 growth factor.
5. Reestablishes the formulas for capital outlay funding formulas for initial capital outlay (15-1463) and for annual per capita outlay (15-1464) for the community colleges.
6. Reestablishes language allowing the legislature to allocate funding for growth in the full-time equivalent student count prior to or in combination with funding of the growth rate.
7. Eliminates the six month residency requirement as a prerequisite for CRS eligibility. (36-261)
8. Reinserts the provision which ties the inpatient hospital per diem component of AHCCCS to the health care index generated by Data Resources, Inc. (36-2903.01)
9. Strikes language authorizing committees, in conjunction with budgetary hearings, to recommend continuation, modification or elimination of funding formulas for programs which are subject to program authorization review.
10. Prohibits construal of this act to affect, limit or expand in any manner any existing or established court decisions or case law.
11. Strikes the delayed effective date of June 30, 1996 and the retroactive date of July 1, 1991 for all sections in the Senate engrossed bill except the retroactivity for section 46-207.01 which locks AFDC at 36 per cent of 1992 FPL.

Senate Action

APPROP 2/13/95 DPA 18-12
3rd Read 2/13/95 DPA 18-12

House Action

APPROP 3/28/95 DPA 9-6-1-1
3rd Read 4/6/95 DPA 31-28-1

Governor Signed 4/19/95
Chapter 196

Prepared by Senate Staff

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April 27, 1995

EXHIBIT B

PROPOSITION 204**OFFICIAL TITLE****AN INITIATIVE MEASURE**

REPEALING SECTION 36-2901.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 29, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 36-2901.01 AND SECTION 36-2901.02; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Repeal

Section 36-2901.01, Arizona Revised Statutes, is repealed.

Sec. 2. Title 36, chapter 29, article 1, Arizona Revised Statutes, is amended by adding a new section 36-2901.01, to read:

36-2901.01. Additional definition of eligibility for the Arizona health care cost containment system; enforcement; private right of action

A. FOR THE PURPOSES OF SECTION 36-2901, "ELIGIBLE PERSON" INCLUDES ANY PERSON WHO HAS AN INCOME LEVEL THAT, AT A MINIMUM, IS BETWEEN ZERO AND ONE HUNDRED PER CENT OF THE FEDERAL POVERTY GUIDELINES AS PUBLISHED ANNUALLY BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND BASED ON THE RESOURCE LIMITS THAT ARE DEFINED BY THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION AND THAT ARE NOT LESS THAN THE RESOURCE LIMITS IN EFFECT ON NOVEMBER 5, 1996, AND ALSO BASED ON OTHER ELIGIBILITY REQUIREMENTS OF FEDERAL LAW OR THE HEALTH CARE FINANCING ADMINISTRATION PURSUANT TO SECTION 1115 OF THE SOCIAL SECURITY ACT. THE PEOPLE ACTING THROUGH INITIATIVE, OR THE LEGISLATURE BY A SIMPLE MAJORITY VOTE, MAY CHANGE THE ELIGIBILITY THRESHOLD TO A PERCENTAGE OF THE FEDERAL POVERTY GUIDELINES THAT IS EVEN MORE INCLUSIVE. NEITHER THE EXECUTIVE DEPARTMENT NOR THE LEGISLATURE MAY ESTABLISH A CAP ON THE NUMBER OF ELIGIBLE PERSONS WHO MAY ENROLL IN THE SYSTEM.

B. TO ENSURE THAT SUFFICIENT MONIES ARE AVAILABLE TO PROVIDE BENEFITS TO ALL PERSONS WHO ARE ELIGIBLE PURSUANT TO THIS SECTION, FUNDING SHALL COME FROM THE ARIZONA TOBACCO LITIGATION SETTLEMENT FUND ESTABLISHED BY SECTION 36-2901.02 AND SHALL BE SUPPLEMENTED, AS NECESSARY, BY ANY OTHER AVAILABLE SOURCES INCLUDING LEGISLATIVE APPROPRIATIONS AND FEDERAL MONIES.

C. AN ELIGIBLE PERSON OR A PROSPECTIVE ELIGIBLE PERSON MAY BRING AN ACTION IN THE SUPERIOR COURT AGAINST THE DIRECTOR OF THE HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION AND THIS STATE TO ENFORCE THIS SECTION AND SECTION 36-2901.02. THE COURT HAS JURISDICTION TO ENFORCE THIS SECTION AND SECTION 36-2901.02 AND ANY RULE ADOPTED PURSUANT TO THESE SECTIONS AND MAY APPLY APPROPRIATE CIVIL SANCTIONS AND EQUITABLE REMEDIES.

Sec. 3. Title 36, chapter 29, article 1, Arizona Revised Statutes, is amended by adding section 36-2901.02, to read:

36-2901.02 Arizona tobacco litigation settlement fund; nonlapsing

A. THE ARIZONA TOBACCO LITIGATION SETTLEMENT FUND IS ESTABLISHED CONSISTING OF ALL MONIES THAT THIS STATE RECEIVES PURSUANT TO THE TOBACCO LITIGATION MASTER SETTLEMENT AGREEMENT ENTERED INTO ON NOVEMBER 23, 1998 AND INTEREST EARNED ON THESE MONIES. THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION SHALL ADMINISTER THE FUND. THE STATE TREASURER SHALL INVEST MONIES IN

THE FUND PURSUANT TO SECTION 35-313 AND SHALL CREDIT MONIES EARNED FROM THESE INVESTMENTS TO THE FUND.

B. THE DIRECTOR SHALL USE FUND MONIES AS FOLLOWS AND IN THE FOLLOWING ORDER:

1. WITHDRAW AN AMOUNT NECESSARY IN EACH FISCAL YEAR TO FULLY IMPLEMENT AND FULLY FUND THE PROGRAMS AND SERVICES REQUIRED AS A RESULT OF THE EXPANDED DEFINITION OF AN ELIGIBLE PERSON PURSUANT TO SECTION 36-2901.01.

2. WITHDRAW AN AMOUNT NECESSARY IN EACH FISCAL YEAR TO FULLY IMPLEMENT AND FULLY FUND EACH OF THE PROGRAMS LISTED IN SECTION 5-522, SUBSECTION E, AS AMENDED PURSUANT TO THE INITIATIVE MEASURE APPROVED BY THE VOTERS ON NOVEMBER 5, 1996, AT FUNDING LEVELS THAT WHEN ANNUALLY ADJUSTED FOR INFLATION, AS PROVIDED IN SAID INITIATIVE, ARE EQUAL TO OR GREATER THAN THOSE PROVIDED FOR IN THAT ELECTION. THE JOINT LEGISLATIVE BUDGET COMMITTEE SHALL COMPUTE THESE ADJUSTED LEVELS AND PROVIDE THIS INFORMATION TO THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION. THE DIRECTOR SHALL TRANSFER THESE MONIES TO THE AGENCIES RESPONSIBLE FOR ADMINISTERING EACH OF THE PROGRAMS. THE LEGISLATURE MAY MODIFY THE FUNDING PROVIDED PURSUANT TO THIS SUBSECTION BY SIMPLE MAJORITY VOTE NOT LESS THAN TEN YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION.

C. THE DIRECTOR MAY USE ANY REMAINING FUND MONIES TO FUND EXPANDED COVERAGE IN THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM INCLUDING THE PREMIUM SHARING PROGRAM AND AS APPROVED BY THE VOTERS OR BY THE LEGISLATURE BY SIMPLE MAJORITY VOTE.

D. THE LEGISLATURE MAY APPROPRIATE ANY MONIES THAT REMAIN IN THE FUND AFTER THE PROGRAMS PRESCRIBED IN SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION ARE FULLY FUNDED AND IMPLEMENTED ONLY FOR PROGRAMS THAT BENEFIT THE HEALTH OF THE RESIDENTS OF THIS STATE.

E. MONIES IN THE FUND:

1. SHALL BE USED TO SUPPLEMENT AND NOT SUPPLANT EXISTING AND FUTURE APPROPRIATIONS TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION FOR EXISTING AND FUTURE PROGRAMS.

2. DO NOT REVERT TO THE STATE GENERAL FUND.

3. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

4. ARE CONTINUOUSLY APPROPRIATED.

Sec. 4. Arizona tobacco litigation settlement fund; conflicting provisions; consistent provisions of measure

A. Section 3 of this measure, relating to the Arizona tobacco litigation settlement fund, supersedes any tobacco litigation settlement fund previously established by the legislature.

B. Any provision of this measure that is not contrary to the provisions of a separate initiative that receives a higher total vote in the election cycle is valid.

ANALYSIS BY LEGISLATIVE COUNCIL

In 1998, the attorneys general of 46 states, including Arizona, agreed to settle a lawsuit they had filed against the manufacturers of tobacco products. As a result, the tobacco manufacturers must pay each of those states a portion of the estimated \$206 billion settlement each year over the next 25 years. Arizona's share is estimated to total approximately \$3.2 billion. Payments are subject to annual adjustments for inflation. The settlement also includes a provision to reduce payments if the volume of cigarettes sold in the United States falls. The settlement agreement allows each state to determine how it will spend its share of the settlement.

Proposition 204 would require Arizona to deposit all of the money it receives over the next 25 years from the tobacco litigation settlement in the "Arizona Tobacco Litigation settlement fund." Money in the fund would be used to increase the number of people who are eligible for coverage in the Arizona Health Care Cost Containment System (AHCCCS), which is the state's health care system for the poor. Currently, there are many eligibility categories that determine if a person can receive health care under AHCCCS, including one that requires that a recipient's net income not exceed approximately 34% of the federal poverty level. If Proposition 204 passes, people who earn up to 100% of the federal poverty level will qualify to receive health care under AHCCCS. Future legislatures could change the eligibility requirements to allow more people to qualify to receive health care under AHCCCS but the Legislature and the AHCCCS administration could not reduce or limit the number of persons who would be able to enroll in AHCCCS.

Any excess monies in the Arizona tobacco litigation settlement fund would also be used to ensure that programs that were previously established by the passage of a proposition in the 1996 general election would be fully implemented at funding levels that, when adjusted each year for inflation, would be at least equal to those provided for in that election as follows:

1. Five million dollars for the Healthy Families program, which provides services to prevent child abuse and neglect and to promote child wellness and proper development.
2. Four million dollars for the Arizona Health Education System to provide scholarships to medical students who agree to practice in areas of the state that are currently underserved by health care professionals.
3. Three million dollars for programs to prevent teenage pregnancy.
4. Two million dollars for disease control research.
5. Two million dollars for Health Start, a program that aims to reduce the incidence of low birth weight babies and childhood diseases and to educate families on the importance of good nutrition and preventive health care for their children.
6. One million dollars for the Women, Infants and Children Food program.

Under the 1996 proposition, all of these programs have had to rely on distributions from lottery revenues. However, this has proven to be an insufficient source of funding for these programs.

Proposition 204 Fiscal Impact Summary

Proposition 204 allocates monies received from tobacco companies as part of a lawsuit settlement. The state is expected to receive between \$92 million and \$109 million annually through 2006. By 2025, the state is expected to have received \$3.2 billion in total tobacco settlement revenues. Proposition 204 would use these monies to expand eligibility for the Arizona Health Care Cost Containment System (AHCCCS), which is the state's health care system for the poor.

A second ballot proposition, Healthy Children, Healthy Families (Proposition 200), also fully spends the tobacco settlement. If both initiatives pass, and Healthy Children, Healthy Families receives more votes than this initiative, this initiative would still go into effect. However, the entire projected state cost of the program would need to be paid from its general or other revenues.

ARGUMENTS "FOR" PROPOSITION 204

Healthy Arizona 2 has been supported by the following endorsers who are concerned about the health and well-being of all the working poor:

Pima County Medical Society; Arizona Rural Health Association; Arizona Ecumenical Council; Arizona Coalition for Human Services; Arizona Association of Community Health Centers; Arizona AIDS Policy Alliance; Arizona Citizen Action; Advisory Council on Indian Health Care; Behavioral Health Council of Southern Arizona; Child and Family Resources; Cocopah Indian Tribe; Community Information and Referral; Common Cause of Arizona; El Rio Community Health Center; Fort Mohave Indian Tribe; Gila River Indian Community; NAACP, Tucson Chapter; National Association of Social Workers – Arizona Chapter; National Organization for Women, Arizona Chapter; Pima County Pediatric Society; Church Women United in Arizona; OOPD (Community Outreach Program for the Deaf); Community Partnership of Southern Arizona; AFL-CIO Central Labor Council of Southern Arizona; AFL-CIO State Executive Board; Arizonans for Quality Health Care, Inc.; American Association of University Women, Arizona Chapter; Green Party of Arizona; Southern Arizona AIDS Foundation; United Community Health Centers; Clinica Adelante; Lake Powell Medical Center; Sunset Community Health Center, Yuma; East Valley Addiction Council; A Place Called Home, Phoenix; Mountain Park Health Center; Southern Arizona Center Against Sexual Assault; Tucson Interfaith HIV/AIDS Network; Crisis Nursery, Inc., Phoenix; Planned Parenthood of Southern Arizona; Women in New Recovery (WINR); Yavapai Prescott Indian Tribe.

United we can and will create a stronger healthier Arizona.

The Healthy Arizona Coalition, Dr. Eve Shapiro M.D., Chair, Healthy Dr. Reuben Merideth, Treasurer, Healthy Arizona Initiative 2, Tucson Arizona Initiative 2, Tucson

Paid for by Healthy Arizona Initiative Committee

The Pima County Medical Society was a strong supporter of the Healthy Arizona Initiative that passed by an overwhelming majority of voters four years ago. That measure was never enacted by our Legislature. The Healthy Arizona Initiative 2 again deserves our full support. We represent more than 1,100 physicians in Pima County. Our members see firsthand the effects of patients' lack of access to health care. Those of us in emergency departments see patients who have waited until illnesses become more severe, so that treatment is more costly and less effective. Patients are seen daily in our offices who forgo recommended evaluations and treatments because of lack of access to health insurance. Our state has one of the poorest records of providing its working citizens with basic health care. Healthy Arizona Initiative 2 provides for the simplest and most easily administered approach to this problem, and the only one in which the working poor are the prime beneficiaries.

Eve Shapiro, MD, Past President, Pima County Medical Society, Tucson

Paid for by Pima County Medical Society Joseph S. Whaley, MD, PCMS Secretary Treasurer, Tucson

Inarguably, Arizona has one of the best Medicaid programs (AHCCCS) yet adopted by any state. In fact, it has now been copied by seventeen other states. But this program remains flawed in one important way: if someone leaves our welfare rolls by taking a job that pays more than one third of the Federal Poverty Level, (\$1.67 per hour), that person must give up his/her health insurance.

In 1996, 72% of your fellow citizens voted to change that eligibility level to 100% of the Federal Poverty Level. But, as usual in this state in recent years, our Governor and Legislature – both chose to ignore your and my expressed instructions in this matter and did absolutely nothing to implement the change.

This Initiative is not aimed at solving a lot of our state problems. Rather, it has only one objective - to implement the decision you and I have already made. Let's not force these working people to go back on welfare, or to have children, in order to keep their health insurance.

Merlin K. DuVal, M.D., Phoenix

As a non-profit health center, El Rio Health Center has been dedicated to serving low income families for the past thirty years. It probably comes as no surprise that our organization fully supports Healthy Arizona II. For 250,000 Arizonans living in poverty and without health insurance, health care is a luxury used sparingly, if at all. It is so because Arizona limits basic health care coverage to so few working families.

In our health center it is an everyday experience for our physicians to encounter patients who can't afford an important test, a visit to the specialist, or a medication. Almost all patients work to house, feed and clothe their families, but with the current cost of health care it is impossible to pay for health care and for your family's needs. Healthy Arizona II will provide the working poor and their families complete health care coverage at no cost.

For the working poor, the tobacco settlement may be the last opportunity to obtain basic health care coverage that has proven so elusive in the past decade. Over that time Arizona has seen a sitting Governor propose such coverage, the voters have overwhelmingly endorsed such coverage, and they have even approved tobacco taxes to expand such coverage. Our families living in poverty, and uninsured, are still waiting. By supporting Healthy Arizona II Arizona voters will end the wait.

Ultimately, the tobacco settlement litigation funds are about health care and social justice. It is not about power struggles and political tradeoffs. We believe in a full measure of health and social justice for the working poor as offered in Healthy Arizona II. For this reason, El Rio Health Center has provided its full moral and financial support to Healthy Arizona II and asks all Arizona voters to do the same.

Robert Gomez, Executive Director, El Rio Health Center, Tucson Arthur N. Martinez, M.D., Medical Director, El Rio Health Center, Tucson

Paid for by El Rio Santa Cruz Neighborhood Health Center Inc.

Vote YES!

We endorsed the original Healthy Arizona Initiative in 1996, and this one follows the same path the voters have already approved. The only change is that Healthy Arizona-2 provides funding, in a way that keeps the politicians from messing it up, by directly appropriating from the tobacco settlement fund to AHCCCS to provide health insurance for low-income workers in Arizona.

Why does NOW care? Because women, and their families, are the ones most apt to need this healthcare. Women disproportionately hold low-wage, fulltime jobs that lack health insurance, and are more apt to have families (including both ends of the age spectrum—children and disabled parents) that place them below the poverty level. Women are more apt to work part-time, or have seasonal jobs, or to have small, self-owned businesses that have no health plan.

Spelling, grammar, and punctuation were reproduced as submitted in the "for" and "against" arguments.

These women deserve doctor's office healthcare as the highest priority for the tobacco lawsuit settlement money. They've waited four years to see the doctor.

Vote YES on Prop 204.

Augustine Grodson, Finance Coordinator, National Organization for Women, Arizona Chapter, Tucson

Paula Bachman-Williams, Chapter Coordinator, National Organization for Women, Arizona Chapter, Tucson

Paid for by National Organization for Women

Healthy Arizona II is the most comprehensive of the health initiatives. It provides funds directly where they are needed: to citizens. Healthy Arizona II offers health insurance coverage for working poor families, including children, married couples without children, single adults, and the elderly. It is the only initiative offering health care to single adults and the elderly with grown children. Funds from this initiative go directly to people for their health care, not to support hospitals. This initiative is supported by more health organizations than any other. It's simple. It's fair. This initiative increases access to health care for thousands of Arizonans. Vote yes on Healthy Arizona II.

Laura Clarkson, Co-Chair, Arizona AIDS Policy Alliance, Paradise Valley

I grew up with some simple rules:

- Play Fair
- Tell the Truth
- Help People Less Fortunate than You
- Keep Your Promises

These are time honored principles used by counselors, clergy, teachers and parents throughout the state - but ignored by a majority of our elected leaders who have refused to authorize health insurance for all poor Arizonans! Remember that four years ago, over 72% of Arizona voters approved the Healthy Arizona initiative that required them to do this! But, instead of following the law and implementing our request, our leaders ignored us, and have basically done nothing to improve health care for adults.

Are you tired of hearing how Arizona always ranks at or near the bottom of all the states on measures of health and well being of its citizens? I am particularly outraged that we have some of the nation's lowest levels of funding for mental health and alcohol and drug treatment. Each year tens of thousands of people who need and want help for mental health or substance abuse have nowhere to go because they have no health insurance and there is nowhere near enough treatment available at state funded counseling centers.

Research collected by the American Psychological Association and other groups has clearly shown what happens when people can't get treatment for mental health problems or alcohol or drug abuse — child abuse, domestic violence, homelessness, some types of crime, serious illnesses, and emergency room visits all increase significantly. In addition, employee productivity and attendance have been shown to decline.

Mental health and substance abuse treatment is part of health care. Healthy Arizona 2 will enable all people who are at or below the national poverty level to qualify for health insurance. One of the best ways to help families is by ensuring health care for all adults and children. Please vote for Healthy Arizona 2.

Eric Schindler, Ph.D., Licensed Psychologist and Director of Clinical Services, La Frontera Center, Inc.
(A not for profit mental health and substance abuse treatment center), Tucson

"The pediatricians in Pima County strongly support the Healthy Arizona 2 initiative. We are choosing this initiative rather than other competing plans because it is the most effective way to help children and their families. Currently, in Arizona, families must earn under \$5700 to qualify for health benefits. Although benefits for children are more generous than for adults, it has been demonstrated that families often do not seek health care for their children if they do not have coverage as well. We are choosing to support this initiative because we believe that it is the most cost-effective way to help children and families. A study by the Morrison Institute at ASU recommended that money from the tobacco settlement should be used for one or two comprehensive programs rather than many small programs whose impact is difficult to measure. Healthy Arizona 2 directs the money to one simple, clear goal — diminishing the gap between the insured and uninsured. Tobacco settlement money should be used to provide health insurance coverage now for our most vulnerable citizens.

Julie Cordova MD, President, Pima County Pediatric Society, Tucson

Scott Radomsky, MD, Treasurer, Pima County Pediatric Society, Tucson

Paid for by Pima County Pediatric Society

Church Women United's involvement in healthcare became personalized by the death on Sept 5, 1995 of a Tucson mother, the sole support of two children and a disabled parent. Four doctor's offices turned her away, saying her minimum wage job, which left her family well below the poverty level, meant she made too much to qualify for AHOCOS healthcare. "Too much" meant more than \$5120 a year. When the fifth doctor finally saw her, the cancer had spread too far.

Four months later we were invited to join an initiative to the people to raise eligibility levels, making AHOCOS health insurance available to all Arizonans living in poverty, including, for the first time, those with jobs. We said yes. And at the 1996 election, the people of Arizona said Yes to the Healthy Arizona Initiative-1, in every county and with an historic, resounding 73% affirmation.

But even after the people speak, politicians can fail to follow through. One year seemed slow but reasonable. Two years was too long to wait to see the doctor. On the third year, we tired of pleading. After four years, sickened by inaction and denial, return to the polls.

Miraculously, we conceived a bypass to this obstinate delay: a new initiative which would change nothing the people approved in 1996, would not displace other programs or create a raft of new ones. Healthy Arizona-2 curbs the tobacco lawsuit settlement, due to bring Arizona \$3 billion over 25 years. With a lawsuit about healthcare for the poor paid for by Arizona, what could be more just and appropriate?

Since that young mother, we've seen so many others: young couples, folks nearing retirement, stricken by ill health, devastated financially, waiting to see the doctor.

Say No to endless delay and broken promises.

Vote for 204.

Vera Lander, Chair, Leader Enrichment, Church Women United, Tucson

Peg Lucius, President, Tucson Chapter, Church Women United, Tucson

Beverly S. Wolfard, Executive Committee, Phoenix Chapter, Church Women United, Phoenix

Paid for by Church Women United in Tucson

Spelling, grammar, and punctuation were reproduced as submitted in the "for" and "against" arguments.

The Arizona Coalition for Human Services includes over 200 health and human service organizations in our membership. We participated in the original group of citizens, human services and health care professionals, and consumers which developed the Healthy Arizona Initiative in 1996 (Prop 203). Health Care for the working poor was an idea whose time had come. We saw our hard work gathering signatures and educating voters result in a nearly 3 to 1 margin in favor of Healthy Arizona. Despite voter approval, the initiative was not implemented. The problems it planned to address still persist.

Arizona is tied with Texas for the greatest number of uninsured citizens. Today, we have a unique opportunity to make a difference in the lives of these citizens. Healthy Arizona 2 concentrates the Tobacco Litigation Settlement money on the major health issue in Arizona, the lack of health insurance for one-quarter of our people. By raising the level of eligibility of AHCCCS to 100% of the federal poverty level, newly insured persons may go to the doctor when health problems begin. They do not have to wait until their condition becomes an emergency. Coverage will include older adults, single persons, and families, anyone whose income falls below the official poverty line. In addition, a group of health prevention, nutrition, and health education programs will receive much-needed expanded funding.

Healthy Arizona 2 is a focused, simple initiative which enables low income Arizonans to receive medical care using the already existing health care system. Any monies left from the Tobacco Litigation Settlement after implementation of Healthy Arizona would be available for other health needs. We believe that it represents the most effective use of these resources and would make the greatest difference for the wellbeing of the people of Arizona.

Suzy Bourque, Co-President, Arizona Coalition for Human Services, Tucson Ann W. Nichols, Co-President, Arizona Coalition for Human Services, Tucson

Paid for by Arizona Coalition for Human Services

"Healthy Arizona 2 is the only initiative on the ballot that helps solve the major health problem in the state – inadequate health insurance for its citizens. Healthy Arizona is the only initiative that significantly impacts this problem by insuring a large number of currently uninsured people (over 100,000 estimated) at a meaningful level (under 100% of the Federal Poverty Level) and covering both children and adults with no children under 18 (vs. limiting adult coverage to parents of insured children). It also addresses six basic health education, nutrition and prevention programs that were previously enacted by the Legislature, but never adequately funded. It is the only health initiative to come from a group of concerned citizens and is exactly what an initiative should be: a citizen effort to address a problem inadequately addressed by elected government. Unfortunately, Healthy Arizona 2 was made necessary by the failure of the state to implement Healthy Arizona 1, passed overwhelmingly by the people in 1996, and repeats those exact same provisions with money from the Tobacco Settlement Fund and the protection of the 1998 Voter Protection Act. Equally unfortunately, legislatively projected cost estimates advanced in the language describing the initiative, in the opinion of the initiative's backers, are totally inaccurate and misleading and are designed to mislead and confuse voters. To the contrary, this initiative will produce federal matching funds (a return of our tax dollars) and leave settlement money to be spent for other programs. It is time to respond: "The voters have spoken!" and, once again, pass Healthy Arizona 2. This time the money is dedicated and, because it will be constitutionally protected, it can't be ignored by state government."

Andy Nichols, Tucson

The Healthy Arizona Coalition would like to respond to the legislative council analysis of Healthy Arizona 2.

- Healthy Arizona is a fiscally responsible solution to a growing problem of the uninsured population in Arizona. It was initially proposed by the then Governor Symington as a cost savings measure because it will enable the state to draw down new federal dollars on a 2:1 matching basis.
- Other states insure at 100% of the federal poverty level or above without facing undue fiscal consequences. Arizona, with its skyrocketing number of uninsured faces a different set of economic consequences that the legislative council omits in mentioning. 40% of all personal bankruptcies are a result of a health care crisis faced without insurance.

We feel the legislative council made a serious effort in their analysis to confuse the voter. They refused to implement this bill legislatively and now they are trying to fool us again by writing a biased report in what is supposed to be an objective analysis.

It's time to get past this politicking. It is time to just do it. Vote yes on Healthy Arizona Initiative 2.

Dr. Eve Shapiro, Chair, Healthy Arizona Initiative 2, Tucson

Dr. Reuben Merideth, Treasurer, Healthy Arizona Initiative 2, Tucson

Paid for by Healthy Arizona Initiative Committee

When the people speak, we have the right to expect something to happen. We voted for this in 1996, but politicians didn't fund it, saying, through four years of budget surpluses, "There is no money." Well, now there is money, and the excuses look pretty feeble. Anyone with plans to spend this windfall should take a number and get in line.

When families are sick, they don't go to programs— they go to their doctor. Doctor's office care is the right medicine, and putting AHCCCS health insurance first for funding, means getting back two of Arizona's federal dollars for each state dollar, tripling the Fund, for worthwhile programs next year.

Vote YES.

Claudia Ellquist, Tucson

The Arizona Association of Community Health Centers fully supports the Healthy Arizona 2 Initiative in its goal of making all of Arizona's working poor eligible for health insurance through the state.

The Arizona Association of Community Health Centers has as its core mission to promote and facilitate the development and delivery of community-oriented, affordable, high-quality, culturally effective, accessible primary health care in the state of Arizona. Our member clinics serve approximately 20% of the AHCCCS population in Arizona. We also serve the overwhelming majority of the current working poor population that will benefit from the increase of AHCCCS to 100% of the federal poverty level.

Community Health Center patients that will be eligible for AHCCCS if Healthy Arizona 2 is implemented, currently only receive primary care services from our member clinics. Though our patients receive the highest-quality primary care services, they have no access to affordable specialty or inpatient services that are periodically needed. Raising the AHCCCS eligibility limit will allow these patients to receive the full spectrum of services necessary to keep all members of their family healthy.

Spelling, grammar, and punctuation were reproduced as submitted in the "for" and "against" arguments.

The low-income working people of Arizona deserve the opportunity to continue working, and have access to medical care. They deserved this opportunity four years ago when the people, by a 72% margin, first voted for this initiative. We cannot continue to ignore the will of the people or the health of our working poor. Arizona must keep the promise - healthcare not welfare. We urge a yes vote on November 7, 2000 on the Healthy Arizona 2 Initiative.

Al Gugenberger, President, AACHC Board of Directors, Phoenix Linda Gorey, Secretary, AACHC Board of Directors, Phoenix
Paid for by Arizona Association of Community Health Centers, Inc.

As a nurse practicing in Arizona, I am very concerned about the plight of the working poor who don't have health insurance. I strongly urge you to vote "YES" on Proposition 204 the Healthy Arizona II Initiative to provide comprehensive health insurance coverage for all of Arizona's working poor.

Under Proposition 204 the cost of health insurance for the working poor will be paid by the tobacco companies through payments to Arizona. Thus, we have the funds available without raising taxes to do what Arizona voters have already demanded.

According to the Morrison institute, Arizona should use its share of the Tobacco Settlement on one major healthcare problem. That approach makes Proposition 204 better for the working poor than Proposition 200. Proposition 200 resembles the "piecemeal" approach (small amounts of money for lots of bureaucracies without solving any of the problems) that the State Legislature took with the state Tobacco Tax money since 1994. In short, Proposition 204 is better than Proposition 200 because it provides more healthcare services to more people.

By the way, that same State Legislature who messed up the use of state Tobacco Tax money is telling you that we can't afford Proposition 204 The Healthy Arizona II Initiative. But four months earlier, the legislative staff said the Tobacco Settlement provides plenty of money to provide health insurance for the working poor.

The sad truth is, our State Legislature cannot be trusted to keep the promise of healthcare that the people made to working poor Arizonans four years ago. Let the Legislature know you will not tolerate their efforts to thwart the will of the people through "smoke and mirrors" and alarmist, politically motivated cost estimates. I urge all Arizonans to vote YES on Proposition 204, The Healthy Arizona II initiative on November 7, 2000.

Marion J. Levett, R.N., Casa Grande

The Green Party of Arizona endorses the Healthy Arizona 2 Initiative.

The voters originally passed this initiative in 1996. Arizona residents approved this sensible measure with overwhelming enthusiasm, and with good reason-it allows more of our families in poverty to have access to health care

The gap between the have's and the have-not's of healthcare is expanding at an alarming rate. The voters in 1996 clearly demonstrated that the people of Arizona are responding to the healthcare industry's withdrawal of healthcare support. And make no mistake about it, the cleverly titled Healthy Children, Healthy Families initiative is no replacement. That initiative funnels funds away from those who need it most-the families of the working poor.

By contrast, Healthy Arizona 2 is pure and simple. It will use the tobacco lawsuit money to provide health services to families who fall through the cracks. Currently in Arizona, a worker supporting a family of 4 must make about \$2 an hour or less to qualify for AHOCSS. This measure will expand coverage to all Arizonans that earn less than the federal poverty level.

Vote YES on Prop 204.

Michael Jay Green, Green Party Candidate, U.S. Congress, District 5, Tucson
Chris Ford, Green Party Candidate, Legislative District 11, Senate, Tucson
John Scudder, Green Party Candidate, Legislative District 25, House, Phoenix
Peter Hormel, Green Party Candidate, Pima County Attorney, Tucson

William Crosby, Green Party Candidate, Legislative District 9, House, Tucson
Bill Moeller, Green Party Candidate, Legislative District 11, House, Tucson

Susan K. Campbell, Green Party Candidate, Pima County Superintendent of Schools, Tucson

Jack Strasburg, Green Party Candidate, Legislative District 10, House, Tucson

Mary "Katie" Bolger, Green Party Candidate, Legislative District 14, House, Tucson

Dave Croteau, Green Party Candidate, Pima County Sheriff, Tucson

Paid for by Green Party

Common Cause urges "Yes" on Proposition 204, the Healthy Arizona Initiative.

This initiative would put tobacco funds where they belong, in Arizona's public health system. While we believe this initiative is an improvement on the competing measure, called "Healthy Children, Healthy Families," we urge voters who may like the thrust of both measures but are uncertain which to support, to, by all means, vote yes for both. If both are approved, any conflicting provisions will be resolved in favor of the measure with the most votes. The use of the tobacco funds for health care will be assured.

Arizona Common Cause is a nonpartisan group of over 3,000 Arizona families with a long history of working for open, clean and sensible self-government.

Miriam Neiman, Treasurer, Arizona Common Cause, Sun City Dennis Burke, Executive Officer, Arizona Common Cause, Phoenix
Paid for by Arizona Common Cause

Spelling, grammar, and punctuation were reproduced as submitted in the "for" and "against" arguments.

ARGUMENTS "AGAINST" PROPOSITION 204

Proposition 204 is not in the best interest of Arizona's citizens and will not provide the benefits that it claims. Proposition 204 takes all of the money Arizona will receive from the tobacco settlement in the future and spends it on new programs, effectively tripling the AHCOCS program.

By spending 100% of the money, this proposition ensures that the future cost increases associated with these vastly expanded programs will have to be funded from other state revenue sources. Since it also prohibits any future plan reductions, it ensures that these programs will require additional funding. As the tobacco settlement amount is expected to fluctuate based on a number of factors, it serves as an uncertain source of primary funding for these programs.

Proposition 204 also has another very disturbing side effect. With an increase in government-provided insurance coverage, companies that currently provide insurance to their employees will see less of a reason to do so. Many may drop their insurance coverage, causing a substantial increase in uninsured Arizonans. Those who become eligible for benefits under the new expanded AHCOCS programs will increase further the total cost of these new programs, thereby requiring even more taxpayer dollars.

Proposition 204 is not good policy. Please join me and vote "No."

Carol Springer, Arizona State Treasurer, Prescott

There are two initiatives on the ballot dealing with Arizona's tobacco settlement money. If both pass, the one with the most votes wins. Both attempt to solve some of Arizona's serious problems, but a close look at Proposition 204 reveals that it isn't what it claims to be.

PROPOSITION 204 CREATES NEW PROBLEMS FOR ARIZONANS AND WON'T SOLVE THE HEALTH CARE PROBLEM.

Vote No! on Proposition 204.

Proposition 204 claims it will use tobacco settlement money to provide health care to everyone below the federal poverty level. BUT WHAT HAPPENS WHEN THE TOBACCO MONEY RUNS OUT? IN 2007, THE TOBACCO MONEY WON'T COVER ALL THE HEALTH-CARE COSTS IN PROPOSITION 204 AND THE ARIZONA TAXPAYER WILL BE LEFT HOLDING THE BILL. The sponsors tell us that the state government will have to apply to Washington for a waiver to reduce the cost, but the federal government has already said they won't approve a waiver.

THAT LEAVES ARIZONANS FACING A TAX INCREASE OR DRAMATIC CUTS IN OTHER GOVERNMENT SERVICES LIKE EDUCATION OR PUBLIC SAFETY IF PROPOSITION 204 PASSES.

WHY DIDN'T THEY TELL US THE TRUTH ABOUT PROPOSITION 204?

Proposition 204 claims it will fund children's and public health programs. IN FACT, IT WILL PUT CAPS ON THOSE PROGRAMS AND PREVENT THEM FROM RECEIVING THE FUNDING THEY TRULY NEED. THESE PROGRAMS ONLY RECEIVE FUNDING AFTER HEALTH COVERAGE HAS BEEN PROVIDED FOR ALL THOSE BELOW THE FEDERAL POVERTY LEVEL. AFTER A FEW YEARS, THERE WILL BE NO SURPLUS AND PROPOSITION 204 WILL BE NOTHING MORE THAN AN EMPTY PROMISE.

VOTE NO! ON A TAX INCREASE.

VOTE NO! ON EMPTY PROMISES.

VOTE NO! ON PROPOSITION 204.

Grant Woods, Former Arizona Attorney General, Phoenix

Paid for by Healthy Children, Healthy Families

BALLOT FORMAT

PROPOSITION 204

PROPOSED BY INITIATIVE PETITION

<p>OFFICIAL TITLE REPEALING SECTION 36-2901.01, ARIZONA REVISED STATUTES; AMENDING TITLE 35, CHAPTER 29, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 36-2901.01 AND SECTION 36-2901.02; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.</p>
<p>DESCRIPTIVE TITLE FUNDS THE HEALTHY ARIZONA INITIATIVE PASSED IN 1996; INCREASES ELIGIBILITY OF WORKING POOR AT FEDERAL POVERTY LEVEL FOR HEALTH CARE COVERAGE THROUGH AHCCCS (ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM); FUNDS HEALTH EDUCATION, NUTRITION AND PREVENTION PROGRAMS; FUNDS PREMIUM SHARING AND OTHER HEALTH CARE PROGRAMS WITH TOBACCO LITIGATION SETTLEMENT MONIES.</p>

PROPOSITION 204

<p>A “yes” vote shall have the effect of providing funding for the 1996 Healthy Arizona Initiative, increasing healthcare coverage eligibility for Arizona's working poor at the federal poverty level and funding previously authorized preventative health education, nutrition and prevention programs using the tobacco litigation settlement money.</p>	<p>YES <input type="checkbox"/></p>
<p>A “no” vote shall have the effect of not requiring appropriation of tobacco settlement money to support these programs.</p>	<p>NO <input type="checkbox"/></p>

Spelling, grammar, and punctuation were reproduced as submitted in the “for” and “against” arguments.

EXHIBIT C

Proposition 204: The Affordable Choice

A Fiscal Analysis

The cost of Proposition 204, with figures derived from the Joint Legislative Budget Committee (JLBC) shows not only does Prop. 204 not "break the bank" as some have said, but leaves money for other healthcare programs to be implemented by the Legislature or other citizen initiative in the future.

Federal cost-sharing in the implementation of Proposition 204, and the combining of federal and state resources for the expansion of health care coverage for the working poor, is a choice that made sense for the Arizona voters in 1996 when they overwhelmingly approved the original Healthy Arizona Initiative. Now, with the available Tobacco Settlement funds, **the expansion of health care is not only the right, but the economically painless choice for Arizona.** Below are solid budget projections based on information from Arizona's Joint Legislative Budget Committee, two independent experts, and the federal Health Care Financing Administration.

1. **Prop. 204 can be fully funded by Arizona's share of the Tobacco Settlement.** Arizona will receive approximately \$103 million per year in Tobacco Settlement payments. When Arizona chooses to accept federal cost-sharing, it will bring Arizona tax dollars back to the state to pay 2/3 of the cost of Proposition 204. The JLBC estimates that Prop. 204 will enroll 116,000 to 130,000 people between 2001 and 2005, with a cost to the state between \$97 million and \$110 million per year.

The federal matching funds will also pay 2/3 the cost for the Medically Needy/Medically Indigent (MN/MI) population, for whom the state previously covered 100% of the cost. The savings to the state from shifting the cost of this population ranges from \$63 million to \$69 million per year.

Subtracting the state savings on the MN/MI population, the net cost of Proposition 204's insurance program to the state is between \$34 and \$41 million.

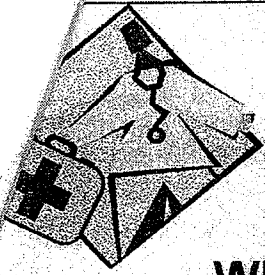
~130,000 people enroll in AHCCCS	\$110 million/year
~16,000 MN/MI population.	<\$69 million/year>
Net cost of Proposition 204 insurance programs to Arizona	<u>\$41 million</u>
Cost of health prevention, nutrition, and education programs*	<u>\$18 million/year</u>
Net cost of Proposition 204	\$59 million/year
*adjusted annually for inflation	

The federal government may require Arizona to trade federal money we have received in the past in order to grant the waiver for Prop. 204. In that event, the state may lose \$45 million a year - money that was not earmarked for healthcare - and the net cost to the state of Prop. 204 will be between \$79 million and \$86 million. Regardless of this possible circumstance, **Prop. 204 is still affordable.**

2. **Prop. 204 does not raise taxes.** When the state chooses to accept the federal waiver, with the federal matching dollars, it is assured that taxes will not need to be raised to cover the program.
3. **No new layer of bureaucracy is added under Prop. 204.** Prop. 204 integrates the expansion of healthcare for the working poor into the existing AHCCCS administration, which is one of the most efficient agencies in Arizona, and one of the most cost-effective Medicaid agencies in the country.

Paid for by the Healthy Arizona Initiative 2 whose major funding is provided by doctors, nurses, community health workers, El Rio Santa Cruz Neighborhood Health Center, Arizona Association of Community Health Centers, and people concerned about healthcare.

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 Dr. Eve Shepiro, Chair; Dr. Reuben Merideth, Treasurer



Proposition 204 vs. Proposition 200

Which Initiative Provides More Healthcare To Arizonans Most In Need?

Proposition 204 – Healthy Arizona 2

❖ Prop. 204 is a very simple plan. It provides healthcare to more people by raising the AHCCCS income eligibility level from 34% of the poverty level to 100% of the poverty level, which is an increase from \$5,352/year for a family of four, to approximately \$16,056/year. An estimated 130,000 Arizonans will be eligible for AHCCCS with the passage of Prop. 204.

❖ Prop. 204 is not new. Voters passed this same initiative by 72% in 1996 (Healthy Arizona I), the second biggest percentage of any initiative in Arizona history. Despite this, the state has never implemented Healthy Arizona I, and ignored the will of the people. Prop. 204 repeats what voters approved in 1996, and with the new "Voter Protection Act" in law, the state cannot ignore the people again.

❖ Prop. 204 is the people's initiative. Prop. 204 is a true grassroots citizen's effort, with volunteers and supporters in every county. Prop. 204 has received financial support from local community organizations and hundreds of concerned Arizona citizens. Organizational support includes AARP, Unions, medial organizations, church and civic groups.

Proposition 200 – HC/HF

Prop. 200 is a complex proposal that does not offer comprehensive health insurance coverage for the majority of low-income Arizonans. The initiative provides for some healthcare coverage but only to parents of children who are eligible for AHCCCS. It does not cover single adults, older adults whose children are grown or pre-Medicare retirees.

Prop. 200 effectively repeals the 100% FPL standard set by the 1996's Healthy Arizona I. Although, the income eligibility level for parents in Prop. 200 is set at 100% FPL, the AHCCCS administration may decrease the income level at will, having the effect of covering fewer people to save the state money. The health insurance "pot" of funds in Prop. 200 is the only one that is not fixed.

❖ Prop. 200 is the Hospital Association's initiative, and provides subsidies to hospitals. The Hospital Association is providing the vast majority of resources to Prop 200, which currently totals over \$1 million. By re-enacting the tobacco tax initiative, it assures that state General Fund money (not Tobacco Settlement) flows directly to hospitals.

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