SUPREME COURT OF ARIZONA

STATE OF ARIZONA, ex rel. MARK BRNOVICH, Attorney General, Petitioner, v. CITY OF PHOENIX, Respondent.	No. CV 20-0019-SA

AMICUS CURIAE BRIEF OF ARIZONA ASSOCIATION OF REALTORS IN SUPPORT OF PETITIONER

SUBMITTED WITH CONSENT OF THE PARTIES

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INTEREST OF AMICUS CURIAE

The Arizona Association of REALTORS® ("Association")[1] submits this brief to assist the Court in addressing the legality of the recently imposed or increased fees on ride-sharing services at the City of Phoenix ("City") airport. The issue before the Court involves whether these fees are invalid under Article IX, section 25 of the Arizona Constitution ("Proposition 126"). Proposition 126 was drafted and supported during the 2018 election by the Association. Consequently, the Association has a significant interest in making sure it is applied according to its terms. With regard to the City fees, application of settled law concludes that the fees are imposed on services, not user fees for use of City property. Moreover, the Association strongly disagrees with several of the arguments made by the City regarding the interpretation and application of Proposition 126. Basing any decision on strained interpretations of Proposition 126, rather than fairly applying its terms, will undermine the will of the voters who approved the Proposition and open the door to future incorrect applications. The Association urges the Court to reject the arguments made by the City that are inconsistent with a fair interpretation of Proposition 126.

[1] No person or entity other than the Association provided financial resources for this brief.

ARGUMENT

I. Adoption of Proposition 126.

Arizona voters overwhelmingly approved Proposition 126 in 2018. It received over 64% of the votes cast, with 1,436,106 voting "YES."[2] The operative provision of Proposition 126 reads:

> The state, any county, city, town, municipal corporation, or other political subdivision of the state, or any district created by law with authority to impose any tax, fee, stamp requirement, or other assessment, shall not impose or increase any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state. This section does not repeal or nullify any tax, fee, stamp requirement, or other assessment in effect on December 31, 2017.

Proposition 126 was written to include every type of taxing government and every kind of tax or fee, or variation on a tax, fee or revenue raising assessment on services. The broad language included in Proposition 126 was necessary because elected officials in Arizona and other states have shown almost unlimited creativity in wording new taxes, fees and levies to not fall within constitutional and statutory limitations. Proposition 126 cannot be avoided merely by raising revenue through "fees" rather than "taxes," or by creating special taxing districts.

[2] Arizona Secretary of State, 2018 Official Canvas, azsos.gov (last visited Feb. 28, 2020).

During the election campaign, opponents of Proposition 126 predicted fiscal disaster if it was enacted. Voters plainly rejected these arguments, wisely understanding that Proposition 126 did not overturn existing taxes, nor does it prevent increasing taxes on nonservices to account for increased financial needs. Proposition 126 simply prohibits state and local governments from imposing taxes, fees or other assessments on services that have not previously been assessed, or imposing higher assessments on any services that are currently being assessed.

The plain language of Proposition 126 shows that it will not disrupt the existing revenue system. First, by its terms, Proposition 126 does not repeal or nullify any tax or other assessment in effect on December 31, 2017. Even if the state or a political subdivision is already imposing a tax on an activity that could be defined as a "service," if the tax was in effect on December 31 2017, it can continue to be imposed and collected. For the few services that are currently taxed, the rate of tax may not be increased but continued collections at the current remain unaffected.

Second, Proposition 126 only applies to taxes and other assessments derived from "services." Arizona has had a transaction privilege tax for more than eighty years that is primarily based on property and property-related transactions. Although many classifications of the transaction privilege tax involve services related to property, settled law distinguishes between taxable transactions and

nontaxable services. That settled law is unaffected by Proposition 126 because it does not include a new definition of "services" that would overturn decades of precedents and practices. The vast majority of current transaction privilege tax collections are not from services. Those taxes, and even increases in tax rates associated with those taxes, are not affected by Proposition 126.

Third, Proposition 126 applies to transaction-based taxes, fees, stamp requirements or assessments derived from services. It does not affect regulatory fees that are not measured by the amount of business performed. Therefore, licensing fees and similar assessments designed to shift regulatory costs for issuing and renewing licenses are not covered, and may be increased.

These limits on the scope of Proposition 126 ensure that it will not have the severe financial effects claimed by its opponents.

II. Services versus Taxable Activities Under Arizona Law.

Proposition 126 originated in response to bills introduced in the Legislature in 2016 and 2018 to expand the transaction privilege tax to cover new classifications for services, personal services and financial services.[3] The services listed included legal, financial, health and medical, parking services, dry cleaning, and a host of others. Proposition 126 puts an end to bills of this nature and the

[3] 2016 Legislative Session HB 2693; 2018 Legislative Session HB 2145.

voters overwhelmingly supported the Proposition, sending a strong message that they oppose new or increased taxes on services.

"Service" is not a new concept in Arizona law. Ever since the adoption of the transaction privilege tax in the 1930's, the Legislature, taxing agencies and the courts have wrestled with the line between taxable activities such as the sale and rental of tangible personal property, contracting, hotels, restaurants and the nontaxable services that are intertwined with those activities.[4] Although specific facts must always be taken into account, the distinction between services and other activities is long-established and the process for differentiating the two is a matter of well-settled law.

In many cases, the Legislature and taxing authorities have incorporated exemptions for services in the statutes and rules. For example, the tax on retail sales specifically excludes professional or personal service occupations that involve only inconsequential tangible personal property and services rendered in addition to selling tangible personal property.[5] Prime contractors are not taxable for separate design and professional services contracts executed before construction begins, and most maintenance and repair contracts are considered to

[4] *See, e.g., Ebasco Servs. Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 98 (1969).

[5] A.R.S. § 42-5061(A)(1) and (2).

be services excluded from the tax on prime contracting.[6] Landscaping activities involve changes to real property and are taxed as prime contracting, but lawn maintenance services are nontaxable services.[7] These exemptions are now protected by Proposition 126.

Arizona law recognizes that many transactions involve a mixture of personal services and something else. In some cases, services may be the primary object of the transaction with the conveyance of goods being incidental or inconsequential. When a client pays an attorney to draft a will, the client is paying for the paper document, but the primary object of the transaction is the legal advice and knowledge provided by the attorney. Under current law, the entire transaction is a nontaxable service.

In other transactions, the primary object will be the tangible property and the accompanying service that is provided is incidental. A retail purchase of clothing at a store is an example. Transporting the property, stocking the shelves and assisting the customer in trying on the clothing are all services necessary for the sale, but the customer is paying for the clothing. As such, the services rendered are incidental. Under current law, the entire transaction is taxable as a retail sale. Still other transactions involve both property and services, but they can readily be

[6] A.R.S. § 42-5075(N) and (O).

[7] A.R.S. § 42-5075(I) and (J).

separated. An example is a car repair, with parts and labor separately itemized on the invoice. Under current law, parts are taxable as a retail sale, while labor is nontaxable.

A recent opinion by the Arizona Court of Appeals summarized the legal analysis used to distinguish between services rendered and the tangible property that is sold or conveyed as part of that same transaction:

> ¶ 10 We now come to what should be easy, but is not. Although tangible personal property is often easy to spot - think of an apple, an automobile, or a television - when the item is largely the product of personal services, characterization becomes more difficult. What about an advertising flyer that involves significant design and creative labor? The value and cost of the paper on which the flyer is printed may pale in comparison to the value and cost of the design and creative labor that went into it. *See generally* Walter Hellerstein, *State Taxation*,¶ 12.08 (3rd ed. 2011) ("Hellerstein"). So, what is being sold—tangible personal property (taxable) or a service (nontaxable)? Answering this question is made more difficult by the reality "that most transactions, to a certain degree, involve some amount of personal service and some amount of tangible property." *New England Tel. & Tel. Co. v. Clark*, 624 A.2d 298, 300 (R.I.1993).
>
> ¶ 11 To try to draw the taxable line in a mixed transaction, that is, one involving both tangible personal property and services, we have identified three possible scenarios: first, the service is the primary object of the transaction and the property is incidental to or an inconsequential element of the service and not separately charged; second, the tangible personal property is the primary object of the transaction and the service is incidental to the property acquired and not separately charged; and third, the property and service are distinct and each is a consequential element of the transaction and can be readily separated. In the first, the sale is all nontaxable; in the second, the sale is all taxable; and in the third, the property, but not the service component, is taxable.

> *Goodyear Aircraft Corp. v. Ariz. State Tax Comm'n*, 1 Ariz. App. 302, 306-307 (1965).[8]

In close cases Arizona courts have applied two tests: the "dominant purpose/true object" test and the "common understanding" test.[9] The *Val-Pak* decision explained:

> ¶ 13 As its name suggests, under the "dominant purpose" test, a court decides whether the transaction is all taxable or all nontaxable by identifying the dominant purpose of the transaction. Although this test has been harshly criticized by courts and commentators because it often leads to inconsistent results, it is nevertheless a recognized method of deciding taxability.
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> . . . .
>
> ¶ 15 Under the "common understanding" test, whether a mixed transaction is all taxable or all nontaxable is determined by the "common understanding of whether a trade, business, or occupation involves selling products, on the one hand, or rendering services ... on the other." Hellerstein ¶ 12.08[2]; *see also Qwest*, 210 Ariz. at 228, ¶ 23, 109 P.3d at 123. As Hellerstein explains,
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> > [s]ince sales tax statutes affect virtually every person within the taxing jurisdiction in everyday transactions, we believe that there is merit to a rule that looks to the understanding that the average individual or business purchaser would attribute to such basic statutory terms as

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[8] *Val-Pak East Valley, Inc. v. Ariz. Dep't of Revenue*, 229 Ariz. 164, 167 ¶¶ 10-11 (App. 2012). The Hellerstein treatise cited in this quote has frequently been cited by the Court of Appeals in Arizona tax cases. *See, e.g., Home Depot USA, Inc. v. Ariz. Dep't of Revenue*, 233 Ariz. 449, 454 ¶ 22 (App. 2013); *State ex rel. Ariz. Dep't of Revenue v. Talley Industries, Inc.*, 182 Ariz. 17, 23 (App. 1994).

[9] *Val-Pak East Valley, Inc. v. Arizona Department of Revenue*, 229 Ariz. 164 ¶ 12 (App. 2012); *Qwest Dex, Inc. v. Ariz. Dep't of Revenue*, 210 Ariz. 223, 226-29 ¶¶ 16-24 (App. 2005).

> "sale" and "service." ... We therefore favor the rule that statutory language "should be given its ordinary and common significance" in distinguishing between what constitutes a sale of tangible personal property and what constitutes the sale of a service.... This rule is simply the application of the view embraced by many courts that "words in a statute are to be given their common meaning."
>
> Hellerstein ¶ 12.08[2] (citations omitted). Thus we "attempt to identify characteristics of the transaction at issue that make it either more analogous to what is reasonably and commonly understood to be a sale of goods, or more analogous to what is generally understood to be the purchase of a service or intangible right."[10]

These tests show that there is already a framework in Arizona law for distinguishing between services and other types of transactions. That framework can be applied to Proposition 126.

Arizona law also provides for distinguishing between activities of the same person, business or taxpayer that will be treated differently for tax purposes if the activities are truly distinct. Under the statutes, a person doing business is presumed to be engaged in a taxable activity and all receipts are presumed to be taxable unless exempt or deductible. [11] Nevertheless, if the person can prove that

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[10] *Id*. at 167-68 ¶¶ 13, 15.

[11] A.R.S. § 42-5023 ("[I]t is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification *comprise the tax base for the business until the contrary is established.*").

their activities can be divided between taxable sales and nontaxable services, the nontaxable portions can be excluded as a separate line of business.[12]

This Court has established a three-part test for determining when a separate line of business exists for services, even when the same taxpayer is taxable for prime contracting or retail activities.[13] To exclude nontaxable income, a taxpayer must show: (1) the receipts from the separate business can be "readily ascertained;" (2) the income from the separate business is "not inconsequential" in relation to the taxpayer's total income; and (3) the separate business is not "incidental" to the main business. This test has been applied for decades to distinguish when a mixed transaction involves separate lines of business.[14] This test should be applied in interpreting Proposition 126.

Applying these tests, Arizona courts and the Department of Revenue by rule have distinguished between taxable activities and nontaxable services in many specific circumstances, including:

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[12] *Ebasco Servs. Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 98 (1969) ("We do not believe that this statute goes so far as to tax all activities of a corporation based on the fact that one of the activities engaged in is that of contracting.").

[13] *State Tax Comm'n v. Holmes & Narver, Inc.*, 113 Ariz. 165, 169 (1976).

[14] *See City of Phoenix v. Arizona Rent-a-Car Systems, Inc.*, 182 Ariz. 75, 78 (App. 1995).

- Gross receipts from services rendered in addition to selling tangible personal property are taxable unless the charge for service is shown separately on the sales invoice and records.[15]
- Separately stated delivery charges by a retailer are not taxable, but freight costs incurred any time prior to the time of the retail sale are subject to tax.[16]
- Taxable rentals of personal property include charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, and similar fees even if billed as separate items, unless specifically exempt.[17]
- Engineering and design services offered by a taxpayer that also offers contracting services are not taxable.[18]
- Late payment charges imposed by a telecommunications company are taxable.[19]
- Book seller's membership fees were taxable as retail gross income and not exempt as services rendered in addition to retail sales.[20]
- Renter of traffic control equipment was taxable on receipts for flaggers, police officers, and traffic control plans when services were incidental to rental business and constituted a small percentage of total receipts.[21]

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[15] A.A.C. R15-5-105.

[16] A.A.C. R15-5-133.

[17] A.A.C. R15-5-1502.

[18] *Ebasco Servs. Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 98 (1969).

[19] *Sprint Spectrum LP v. Ariz. Dep't of Revenue*, 2011 WL 6057995 (Ariz. App. 2011) (cited not for precedential value, but as evidence of the rule).

[20] *Walden Books Co. v. Dep't of Revenue*, 198 Ariz. 584, 588 (App. 2000).

[21] *Roadsafe Traffic Systems Inc. v. Ariz. Dep't of Revenue*, 2018 WL 5269907 (Ariz. App. 2018) (cited not for precedential value, but as evidence of the rule).

For vehicles, the difference between a charge for use of property and providing a service is usually whether a driver is provided, or the lessee/renter/customer is given exclusive use and control of the property.[22] Under this established law, there can be no dispute that transportation network companies ("TNCs") are providing a service to their customers.

In interpreting and applying Proposition 126's prohibition of taxes on "services," the courts should look to how services have been interpreted in prior court decisions and by administrative agencies, as well as lines drawn by the Legislature. In doing so, commonly used tests can distinguish between services and other activities, and whether services are a separate line of business or simply an incidental part of a taxable activity. As this Court recently explained in addressing whether a hospital assessment was a "tax" for purposes of the Arizona Constitution's supermajority vote requirement for increases in revenues, because the Constitution did not define "tax," "fee," or "assessment," courts should look to "more general caselaw for guidance."[23] When applying the terms of Proposition 126, the same analysis should be followed, which will result in consistent interpretations.

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[22] *City of Phoenix v. Bentley-Dille Gradall Rentals, Inc.*, 136 Ariz. 289, 291-92 (App. 1983); *see also State Tax Comm'n v. Peck*, 106 Ariz. 394, 396 (1970); *Jones v. Outdoor Advertising v. Ariz. Dep't of Revenue*, 238 Ariz. 1, 3-4 ¶¶ 10-12 (App. 2015).

[23] *Biggs v. Betlach*, 243 Ariz. 256, 259 (2017).

In the present case, the dominant purpose, common understanding and separate line of business tests are instructive because the City argues that while its fees imposed on TNCs (effectively ridesharing services), the fees are not imposed on the services provided to their customers by TNCs, but on the TNC's use of airport property. Application of the separate line of business test shows that the two parts of the TNC's business cannot be separated, and the dominant purpose and common understanding of the fees is to charge TNCs for picking up and dropping off passengers at the airport. Use of the airport property is effectively incidental to charging for ridesharing "services."

III. The City's Trip Fees are Imposed on Services.

The City argues fees charged to TNCs are for use of airport property. City of Phoenix Response to Petition for Special Action ("Resp.") at 11. The Association does not dispute a government's power to charge "fees to use government-owned or government-operated properties such as convention centers, public parks, town squares, parking lots, and sports arenas." Resp. at 36. If such charges are effectively rent for use of such properties, they will not be prohibited by Proposition 126. If, however, the fees are actually imposed on services they will not be immune from Proposition 126 simply because the charged activity includes an incidental use of government property.

The ultimate issue before the Court in this case is whether trip fees are imposed on TNCs for using airport property or for providing transportation services to their riders. Applying the dominant purpose, common understanding and separate line of business tests discussed above, the clear answer is that the City fees are imposed on services.

The dominant purpose and common understanding of the fees is that they are charges on visitors coming to and departing from the airport. This is shown by the measure of the fees, based on drop offs or pick-ups, or stops at which passengers will connect with ground transportation. If the purpose was actually to charge for use of airport property, all users would be charged. Unlike fees for parking and rent for restaurant/retail space, trip fees do not provide the payer with exclusive access or occupancy of any specific space within the airport to store a vehicle or conduct a business. Also, unlike fees for parking and restaurant/retail space, which are paid by users whether the use is commercial or not, trip fees are only paid by some users. TNCs share the roadways with all other drivers, most of whom pay nothing for the privilege. Even the pick-up curb space must be shared with other TNCs, and drop-off curb space is shared with everyone. Under the City ordinance the dominant purpose is to place a charge on the TNC's commercial relationship with the customers who pay for the transportation service provided by the TNC (and who will ultimately bear the economic burden of the trip fees).

Finally, allowing TNCs to use airport property cannot be separated from the TNC's commercial relationship with their customers. They are inherently connected and cannot be treated separately. Indeed, they are not treated separately by the Ordinance, which is intended to charge TNCs for commercial activities within the airport, i.e., making money from riders. Any fee paid by a TNC is not based on a wish to drive through the airport; it is based on an intent to serve and charge customers who are traveling to or from the airport. The City does not charge friends and family dropping off or picking up people at the airport, even though they use the same roads and curbs as TNCs. Under these circumstances, the service provided by TNCs is inseparable from its use of airport property, and the City fees are imposed on that service.

IV. The City's Remaining Arguments Should Be Rejected.

Aside from its argument that trip fees are not imposed on a "service" at all, but a user fee for City property, most of the City's arguments regarding Proposition 126 are simply attempts to define away the requirements of the Constitution. If the "not a service" argument is insufficient to prevail on its own, the City's position should not be sustained based on a strained reading of the Constitution.

A. The Fees are "Transaction-Based."

As noted above, Proposition 126 applies to transaction-based taxes, fees, stamp requirements or assessments derived from services. Licensing fees and similar assessments designed to shift the costs for issuing and renewing licenses are not covered. Here, the airport fees go far beyond that purpose. The City admits the fees are set to provide funding for the Sky Train, which actually serves a different population than rideshare customers. If everyone used ridesharing the Sky Train would be unnecessary. As the City acknowledges, the fees are imposed on persons making money at the airport. They are not intended to apply to someone simply driving through.

In this case, TNCs have two sets of transactions that are the subject of the City's regulation and fees. On one side is the relationship with the City; on the other the TNC's service transactions with their riders. The City argues that the term "transaction-based" means "something triggered by a commercial agreement or an exchange of consideration." Resp. at 14. It then shows that its relationship with TNCs is exactly that. Applying the City's own argument that it is charging for use of airport property, that charge is based on a commercial agreement between the City and the TNCs. The City also asserts that it is giving consideration for the fees through allocation of curb space and road maintenance. Under the City's own definition, its fees are imposed on transactions.

The City's attempt to narrow the voter's intent in passing Proposition 126 by adopting a strained interpretation of "transaction-based" must be rejected.

B. Proposition 126 is not Limited to "Fees" on "the Privilege to Engage in" Providing Services.

The City argues its fees are not imposed "on the privilege to engage in … any services performed in this state." Resp. at 23. This misreads Proposition 126. The limitation of Proposition 126 on new or increased fees on services is not itself limited or modified by the separate limitation on assessments on the privilege to engage in providing services.

Separating out its parts, Proposition 126 applies to:

- any
  - sales tax,
  - transaction privilege tax,
  - luxury tax,
  - excise tax,
  - use tax,
- or any other transaction-based
  - tax,
  - fee,
  - stamp requirement or
  - assessment on
    - the privilege to engage in, or
    - the gross receipts of sales or gross income derived from,
- any service performed in this state.

The phrase "the privilege to engage in" any service does not modify "fee," or for that matter, "tax" or "stamp requirement." It modifies "assessment on."[24] The reference to "privilege to engage in" is included in Proposition 126 because Arizona has frequently characterized assessments as not being taxes on transactions, but taxes on the privilege to do business. *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234, 239 ¶ 13 (2019). The drafters of Proposition 126 crafted language to thwart any attempts by a city, county or the State to argue a revenue raising measure was not a tax on a service, but simply an assessment for the privilege of doing business within the jurisdiction. Therefore, Proposition 126 cannot fairly be read to use that separate provision, intended to broaden the scope of the limitations, as a reason to narrow its application.

C. Proposition 126 is not Limited to Taxes, and Ejusdem Generis Does Not Apply.

Proposition 126 does not contain a list of specifics followed by a catch-all phrase. It contains a list of specific taxes followed by a second list of specific government impositions that are prohibited. As quoted above, the operative sentence reads:

[24] Arizona recognizes the last antecedent rule, which "requires that a qualifying phrase be applied to the word or phrase immediately preceding as long as there is no contrary intent indicated." *Phx. Control Sys., Inc. v. Ins. Co. of N. Am.*, 165 Ariz. 31, 34 (1990).

> The state, any county, city, town, municipal corporation, or other political subdivision of the state, or any district created by law with authority to impose any tax, fee, stamp requirement, or other assessment, shall not impose or increase any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state.

If the phrase stopped at "any other transaction-based tax" it could be argued that this phrase was a catch-all to be interpreted in light of the preceding specific list. But by including "fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from," the intent is plainly read to include items that fall outside the taxes listed. Certainly "fees" and "taxes" are distinct assessments under Arizona law, as shown by the cases cited above that have distinguished between the two, as well as those cases cited by the City. Resp. at 32-35.

Ejusdem generis does not apply simply because the word "other" is included in a sentence. As explained long ago by this Court:

> The doctrine of ejusdem generis, however, is only a rule of construction, to be applied as an aid in ascertaining the legislative intent, and does not control where it clearly appears from the statute as a whole that no such limitation was intended. Nor does the doctrine apply where the specific words of a statute signify subjects greatly different from one another, nor where the specific words embrace all objects of their class, so that the general words must bear a different meaning from the specific words or be meaningless.

Arizona Superior Min. Co. v. Anderson, 33 Ariz. 64, 71 (1927) (citation omitted); *see also Goldberger v. State Farm Fire & Cas. Co.*, 247 Ariz. 261, 265 (App. 2019) ("For this reason, the canon ***ejusdem generis*** is also not helpful here. At most, each preceding word in the Exclusion could refer to a wide category of animals, a usage that *might* favor a species-based definition. But, then again, whether a particular animal is "vermin" would appear to call for an individual determination in most cases."). Similarly, in this case ejusdem generis is not helpful.

Consequently, the plain language of Proposition 126 is not limited to taxes or tax-like assessments.

D. The Publicity Pamphlet, Proposition Title, or Other Legislative History Cannot Defeat the Plain Language of the Constitution, which Unambiguously Applies to Fees.

The City argues the scope of Proposition 126 should be limited to taxes because taxes were most frequently discussed prior to the public vote. Resp. at 29-32. As discussed above, however, the plain language of Proposition 126 unambiguously applies its restrictions to more than taxes. Proposition 126 also expressly applies to "any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state." Those words were also on the ballot and in the publicity pamphlet to avoid ambiguity and ensure that

voters had no doubts as to the precise nature of the Proposition. As discussed above, the broad language of Proposition 126 was included to avoid exactly the arguments being made here, which seek to narrow the scope of what the voters approved.

E. The City's Separate Amendment Argument is Untimely, and Unnecessary.

The City argues applying Proposition 126 to its trip fees would render Proposition 126 unconstitutional under the separate amendment requirement of Article XX1, Section 1, of the Arizona Constitution. Any challenge to Proposition 126 on separate amendment grounds had to be made before the election, so raising it now is untimely. As this Court stated in *Renck v. Superior Court of Maricopa Cty*., 66 Ariz. 320, 327 (1947): "Once the measure has been placed upon the ballot, voted upon and adopted by a majority of the electors, the matter becomes political and is not subject to further judicial inquiry as to the legal sufficiency of the petition originating it."

In any event, the City's argument is wrong because it incorrectly presumes that the fees are not imposed on services, but are simply charges for the use of government-owned property. As discussed above, because the trip fees are imposed on services, Proposition 126 plainly applies. Equally, if the City is correct and the trip fees are not imposed on services, Proposition 126 does not

apply. In either case, there is no reason for this Court to even address the separate amendment argument.

CONCLUSION

This Court should hold that the Ordinance adopted in December 2019 imposes and increases fees on services and is prohibited by Proposition 126.

RESPECTFULLY SUBMITTED this 3rd day of March, 2020.

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