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16 ARIZONA SUPERIOR COURT  
17 MARICOPA COUNTY

18 City of Phoenix, a political subdivision  
19 of the State of Arizona,

20 Plaintiff,

21 v.

22 State of Arizona, and Mark Brnovich,  
23 Arizona Attorney General,

24 Defendants.

No.

**APPLICATION FOR A PRELIMINARY  
INJUNCTION  
(Oral Argument Requested)**

25 The City of Phoenix moves this Court pursuant to Rule 65 of the Arizona Rules of  
26 Civil Procedure for a preliminary injunction enjoining Defendants the State of Arizona  
27 (“State”) and Attorney General Mark Brnovich (“Attorney General”) (collectively,  
28 Defendants”) from enforcing House Bill 2893, a law that violates two sections of the  
Arizona Constitution: Article IV, Part II, Section 13 (“Section 13”) and Article IV, Part II,  
Section 20 (“Section 20”). Without judicial action, House Bill 2893 will become effective  
on September 29, 2021.

## Statement of the Case

1  
2 Arizona’s Constitution explicitly and repeatedly prohibits the practice of lumping  
3 multiple subjects in the same bill. As to *all* legislative acts, the Constitution commands that  
4 “[e]very act shall embrace but one subject and matters properly connected therewith, which  
5 subject shall be expressed in the title.” Ariz. Const. art. IV, pt. II, § 13. As to legislative acts  
6 with appropriations, the Constitution imposes an even *stricter* requirement: that  
7 “appropriations shall be made by separate bills, each embracing but one subject.” *Id.* § 20.

8 Here, there is no “properly connected therewith” wiggle room. The text is plain:  
9 appropriations bills must embrace one subject *only*. Enforcing these “single subject” rules  
10 by striking down legislation that doesn’t comply with them, the Arizona Supreme Court has  
11 explicitly and repeatedly told the Legislature that “lumping multiple subjects in the same  
12 bill tends to undermine the legislative process by stifling valuable debate within  
13 government’s most important forum of persuasion and policymaking, the legislature.”  
14 *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 38 (2003).

15 But the Legislature evidently wasn’t listening and hasn’t learned. This past  
16 legislative session, the Legislature enacted a Budget Reconciliation Bill (“BRB”) that  
17 “lump[s] multiple subjects” into a bill that contains appropriations. That bill is House Bill  
18 2893 (the “Act” or “H.B. 2893”). And as if violating the single-subject rules wasn’t enough,  
19 the Act also violates the provision of Section 13 that requires the “one subject” of any bill  
20 to “be expressed in the title” of that bill. This so-called “Title Requirement” represents a  
21 related but distinct requirement imposed because Arizona’s founders worried that “[a]  
22 voluminous act would be introduced and given an appropriate title, and then somewhere in  
23 the body of the act would be hidden a clause dealing with a subject entirely foreign to that  
24 expressed in the title.” *Hancock v. State*, 31 Ariz. 389, 400 (1927).

25 Where, as here, the Legislature disregards the democracy-protecting limits that the  
26 Constitution expressly imposed, the courts must step in. In this action, the City of Phoenix  
27 (“City”) seeks to enjoin the Act, a law that both unconstitutionally undermines the  
28 legislative process and unconstitutionally limits the power of Arizona’s largest charter city.

## Factual Background

### *Relevant Constitutional Provisions*

In learning from the 47 preceding states' problems and constitutions, Arizona's founders drew constitutional boundaries around legislators' powers to legislate. These boundaries were critical, the founders explained, to encourage debate and curtail political manipulation and deception in the legislative process. Three such boundaries govern here.

*First*, the Constitution limits legislation to a single subject. "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title[.]" Ariz. Const. art. IV, pt. II, § 13. The first clause of this sentence is known as the "Single Subject Rule." By design, "[it] was intended to prevent" both "an individual legislator from having to vote for a disfavored proposition to secure enactment of a favored one" and "the governor from having to veto an entire bill, including provisions he approves, to prevent disfavored provisions from becoming law." *Ariz. Chamber of Com. & Indus. v. Kiley*, 242 Ariz. 533, 541 ¶ 30 (2017). Every act thus must contain only a single subject.

*Second*, every act must bear a title disclosing the act's contents. Specifically, and under the same section as above, "[e]very act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Ariz. Const. art. IV, pt. II, § 13. The second clause in this quotation is known as the "Title Requirement." In adopting this requirement, Arizona's founders worried that "[a] voluminous act would be introduced and given an appropriate title, and then somewhere in the body of the act would be hidden a clause dealing with a subject entirely foreign to that expressed in the title." *Hancock*, 31 Ariz. at 400. An act therefore cannot "mislead or tend to avert inquiry as to the context thereof." *Dennis v. Jordan*, 71 Ariz. 430, 439 (1951).

*And third*, likely acknowledging the elevated concerns with using appropriations as incentives in legislative lobbying, the Constitution further limits the legislative process for appropriations bills. In doing so, the Constitution distinguishes between "[t]he general appropriation bill" and "[a]ll other appropriations." Ariz. Const. art. IV, pt. II, § 20.

1 Whereas “[t]he general appropriation bill shall embrace nothing but appropriations,” “[a]ll  
2 other appropriations shall be made by separate bills, each embracing but one subject.” *Id.*

### 3 *Budget Reconciliation Bills*

4 Arizona’s Legislature typically proposes and enacts legislation in multiple ways  
5 relevant here: through general appropriations bills (sometimes called “feed bills”), topically  
6 tailored appropriations bills, and general legislation, including bills that complement the  
7 feed bill (sometimes called “budget reconciliation bills” (“BRBs”) or omnibus  
8 reconciliation bills (“ORBs”)). A “general appropriation bill is not in the true sense of the  
9 term legislation,” but rather “merely a setting apart of the funds necessary for the use and  
10 maintenance of the various departments of the state government already in existence and  
11 functioning.” *Sellers v. Frohmiller*, 42 Ariz. 239, 246 (1933). This feed bill is the “primary  
12 budget bill” for each fiscal year. Joint Legislative Budget Committee, *Arizona’s Budget*  
13 *Process* (Aug. 7, 2018), <https://www.azleg.gov/jlbc/BudgetingProcessforweb08-18.pdf>.  
14 The Legislature also enacts special appropriations bills, each covering a narrow topic.  
15 General legislation amends, enacts, or repeals substantive statutes. And BRBs are bills that  
16 the Legislature enacts along with the feed bill each year to make “statutory changes required  
17 to enact the budget.” *Id.*

### 18 *The Act*

19 Despite the constitutional limits detailed above, the most recent (Fifty-fifth)  
20 Legislature enacted a slew of 11th hour bills that are quintessential “hodgepodge’  
21 legislation” that the above constitutional provisions are meant to prevent. *Litchfield v.*  
22 *Elementary Sch. Dist. No. 79 of Maricopa Cnty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980)  
23 (citation omitted). Perhaps the most egregious example is the Act at issue here.

24 The Act was enacted by the Legislature and signed by the Governor on the last day  
25 of the legislative session. The Act’s title contains 235 words, nearly all of which are  
26 citations to the relevant statutes. After listing these affected statutes, the title provides a  
27 general description: “appropriating monies; relating to criminal justice budget  
28 reconciliation.” H.B. 2893 at i (capitalization omitted).



1 that purpose. City of Phoenix Ordinance G-6851 at 1 (“Ordinance” or “Ord.”), attached to  
2 Complaint as “Exhibit A.” On May 19, 2021—about one month before the Legislature  
3 passed the Act—the City passed the Ordinance, creating the City’s Office of Accountability  
4 and Transparency (“OAT”). Per the Ordinance, “[t]he OAT shall monitor or investigate  
5 [certain] incidents” involving PhxPD and “may also make any recommendations  
6 . . . regarding the sufficiency of any investigation.” *Id.* at 5 (codified at City Code § 20-  
7 6(A), (D)). The Ordinance further states that “[n]either the Director nor any employees in  
8 the OAT’s office . . . shall have formerly been employees of any law enforcement agency.”  
9 *Id.* at 4 (codified at City Code § 20-5(D)).

10 Because the OAT was just created, the City in June 2021 began the recruiting and  
11 hiring process for the OAT’s director. Decl. of Wanda Easley-Small ¶ 9, attached to  
12 Complaint as “Exhibit C.” The application process closed on August 2, 2021. *Id.* ¶ 14. The  
13 City will in September 2021 interview candidates and conduct public meetings on final  
14 candidates. *Id.* ¶¶ 19–20. Then, in October or November 2021, the City will hire the OAT  
15 Director, who will hire the OAT’s staff. *Id.* ¶¶ 21, 25. No applicant was eligible to apply  
16 who is an Arizona Peace Officer Standards and Training Board certified law enforcement  
17 officer who is of any rank and who is from the same department or agency as a law  
18 enforcement officer from the Phoenix Police Department, *id.* ¶ 17, as the Act mandates, *see*  
19 H.B. 2893 § 16. The Act thus impedes the City’s ongoing hiring process for the OAT.

20 *Second*, the Act changes the qualifications for members of “civilian review boards,”  
21 which are composed of civilian appointees who oversee allegations of law-enforcement  
22 misconduct. *Id.* § 17 (amending A.R.S. § 38-1161). The Ordinance envisions a Civilian  
23 Review Board (the “Board”), made up of non-City employees, working together with the  
24 OAT to monitor PhxPD. But the Act purports to dictate, indeed fundamentally change, who  
25 can be a member of the Board. Furthermore, the Act would impact training and  
26 qualifications that apply to at least three other existing City boards.

27 *And third*, the Act extends State law to City affairs and threatens the City’s right to  
28 State funds. Specifically, the Act amends previously enacted Senate Bill 1487 (codified at



1 All four factors weigh in favor of granting relief here.

2 **I. The City is Likely to Succeed on the Merits.**

3 *First*, the City is likely to succeed on the merits of its claims for declaratory and  
4 injunctive relief because the Act violates both Section 13 and Section 20 of the Constitution.

5 **A. The Act Violates Section 13.**

6 In its Complaint, the City asserts two constitutional violations under Section 13. One,  
7 the Act violates Section 13’s Single Subject Rule by legislating on more than a single  
8 subject—eight, to be clear. And two, the Act violates Section 13’s Title Requirement by  
9 specifying in the title that the Act “appropriat[es] monies” and “relat[es] to criminal justice  
10 budget reconciliation” but, in reality, legislating outside these supposed legislative limits.  
11 As established below, the City likely will succeed on both claims.

12 **1. The Act Violates the Single Subject Rule.**

13 Most notably, the City will succeed in establishing that the Act violates the Single  
14 Subject Rule of the Arizona Constitution. With legislation, “[e]very act shall embrace but  
15 one subject and matters properly connected therewith, which subject shall be expressed in  
16 the title.” Ariz. Const. art. IV, pt. II, § 13. “[T]he Single Subject Rule applies only to acts  
17 by the legislature . . . .” *Kiley*, 242 Ariz. at 541 ¶ 31. And when an act violates this  
18 requirement, “the general rule [is] that the entire act must fall.” *Litchfield*, 125 Ariz. at 226.

19 “The purpose of this single subject provision is to prevent surprise and the evils of  
20 surreptitious or hodgepodge legislation, including the practice known as logrolling.” *Clean*  
21 *Elections Inst. v. Brewer*, 209 Ariz. 241, 243 ¶ 4 (2004), *abrogated in part on other grounds*,  
22 *Ariz. Together v. Brewer*, 214 Ariz. 118, 124 ¶¶ 20–21 (2007). “A bill that deals with  
23 multiple subjects creates a serious ‘logrolling’ problem because an individual legislator ‘is  
24 thus forced, in order to secure the enactment of the proposition which he considers the most  
25 important, to vote for others of which he disapproves.’” *Bennett*, 206 Ariz. at 528 ¶ 37  
26 (citation omitted). Perhaps worse, “lumping multiple subjects in the same bill tends to  
27 undermine the legislative process by stifling valuable debate within government’s most  
28 important forum of persuasion and policymaking, the legislature.” *Id.* at ¶ 38. The Single



1 Subject Rule thus not only “spar[es] an individual legislator from having to vote for a  
2 disfavored proposition to secure enactment of a favored one,” but also “frees the governor  
3 from having to veto an entire bill, including provisions he approves, to prevent disfavored  
4 provisions from becoming law.” *Kiley*, 242 Ariz. at 541 ¶ 30.

5 For these reasons, the Single Subject Rule limits “[e]very act” to “one subject and  
6 matters properly connected therewith.” Ariz. Const. art. IV, pt. II, § 13. This single  
7 “subject” refers to “all matters having a logical or natural connection.” *Litchfield*, 125 Ariz.  
8 at 224 (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891)). “To constitute  
9 duplicity of subject,” the court of appeals has explained, “an act must embrace two or more  
10 dissimilar or discordant subjects that by no fair intendment can be considered as having any  
11 legitimate connection with or relation to each other.” *Id.* (quoting *Johnson*, 50 N.W. at 924).

12 Here, the Act legislates on many subjects. At a general level, all of the Act’s 28  
13 sections fall into (at least) eight subjects:

- 14 • Criminal justice, criminal-justice reform, and related appropriations,<sup>1</sup>
- 15 • Emergency communications systems for schools in certain counties,<sup>2</sup>
- 16 • Border security and cyberattacks,<sup>3</sup>

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17 <sup>1</sup> See H.B. 2893 § 1 (a “reentry planning services program within a county jail” for  
18 “persons who are booked into a county jail”); *id.* § 7 (“a county probation success incentive  
19 payment” based on “the number of probationers successfully prevented from entering  
20 prison”); *id.* § 8 (funding for “medical or forensic interview expenses” for “secur[ing]  
21 evidence” relating to “a dangerous crime against children” or “a sexual assault”); *id.* § 9 (an  
22 exception to jury duty for certain Department of Corrections employees); *id.* §§ 14–15 (a  
23 “mental health transition pilot program” for “eligible inmates”); *id.* § 16 (investigations of  
24 “law enforcement misconduct”); *id.* § 17 (qualifications for members of civilian review  
25 boards tasked with reviewing “the actions of peace officers”); *id.* § 21 (“rapid DNA testing  
26 of crime scene DNA samples”); *id.* § 25 (instructions for “the state department of  
27 corrections” when “submit[ting] the fiscal year 2022-2023 budget estimate”); *id.* § 26  
28 (authorizing “the department of public safety [to] use monies in the state aid to indigent  
defense fund”); *id.* § 27 (directing “the department of public safety [to] purchase one of the  
ten virtual firing ranges for the White Mountain Apache police department”).

<sup>2</sup> See H.B. 2893 § 19 (establishing a “school safety pilot program,” for “up to eight  
hundred schools that are across three different counties,” with “a secure, multimedia data  
communications system”).

<sup>3</sup> See H.B. 2893 §§ 11–12.

- 1 • Funding for “a readiness center” for the Department of Emergency and Military  
2 Affairs,<sup>4</sup>
- 3 • Court administration and procedure,<sup>5</sup>
- 4 • Public access to public records,<sup>6</sup>
- 5 • The Arizona Department of Water Resources’ adjudication of water rights,<sup>7</sup> and
- 6 • Political autonomy, and state funds for, Arizona’s counties, cities, and towns.<sup>8</sup>

7 These subjects do not, in fact, share “a logical or natural connection.” *Litchfield*, 125  
8 Ariz. at 224 (citation omitted); *see also Bennett*, 206 Ariz. at 528 ¶ 39 (“The problem arises  
9 because the relevant [acts] address multiple subjects.”). Rather, the Act “is a miscellany,  
10 rather than a cohesive and coordinated set of [provisions],” and lacks a “single ‘general  
11 design’ in the various provisions.” *Litchfield*, 125 Ariz. at 225; *see also Ex. B* ¶ 12  
12 (declaring that the Act’s provisions “are subjects that . . . would find support from differing  
13 groups of legislators or have differing levels of support from the Governor”).

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14  
15  
16 <sup>4</sup> H.B. 2893 § 23.

17 <sup>5</sup> *See* H.B. 2893 § 2 (prohibiting the Supreme Court from changing “real property  
18 rights or questions of substantive law”); *id.* § 3 (“the Arizona lengthy trial and digital  
19 evidence fund”); *id.* § 4 (funding for “the Supreme Court to provide additional full-time  
20 personnel” and “to provide case management and other support equipment, services and  
21 personnel”); *id.* § 5 (funding used by “the clerk of the superior court” “to manage and store  
22 digital evidence and to facilitate the display of evidence to the jury and court at trial and  
23 related proceedings”); *id.* § 6 (electronic filing of, and access to, superior court records); *id.*  
24 § 24 (funding for the Supreme Court’s “new appellate case management system”).

25 <sup>6</sup> *See* H.B. 2893 § 20 (limiting public access to videos of law enforcement and  
26 establishing a fee for such public-records requests).

27 <sup>7</sup> *See* H.B. 2893 § 4 (establishing funding for “the Department of Water Resources  
28 for additional full-time personnel and other equipment and services related to the general  
adjudication” and requiring a corresponding “expenditure plan”); *id.* § 22 (concerning  
litigation over water rights and authorizing “the Supreme Court [to] appoint additional  
paralegals and law clerks” for this litigation).

<sup>8</sup> *See* H.B. 2893 § 18 (expanding S.B. 1487’s scope to allow legislators to claim that  
“any written policy, written rule or written regulation adopted by any agency, department  
or other entity of [a] county, city or town” violates State law and to eliminate State funding  
for any such political subdivision).

1           Several cases confirm this conclusion. In one case, for example, the court of appeals  
2 could not “perceive any realistic commonality between” an act’s provisions on “executive  
3 aircraft for the Department of Public Safety, a mobile dental clinic to be operated by the  
4 Dental Health Bureau, an apparently operational grant to the Board of Dental Examiners,  
5 an historical data based cross-reference index for the Incorporating Division of the  
6 Corporation Commission, and a capital appropriation to the Department of Corrections for  
7 a variety of purposes, including architectural fees for a new prison.” *Litchfield*, 125 Ariz. at  
8 225. And in a 2003 case, the Supreme Court concluded that an act “address[ed] multiple  
9 subjects,” including legislation relating to “state lottery fund monies,” “intergovernmental  
10 agreements” for “a county highway bridge,” and “the removal of the Liquor Control  
11 Division from the Department of Public Safety.” *Bennett*, 206 Ariz. at 528 ¶ 39 & n.9. The  
12 Act here suffers the same type of defect.

13           The City therefore is likely to succeed on the merits of its Single Subject claim.

## 14                           **2.       The Act Violates the Title Requirement.**

15           Related to the above argument, the City also will succeed in establishing that the Act  
16 violates the Title Requirement of the Arizona Constitution. This claim is based on the same  
17 constitutional provision as above, which, as a reminder, states: “Every act shall embrace  
18 but one subject and matters properly connected therewith, *which subject shall be expressed*  
19 *in the title[.]*” Ariz. Const. art. IV, pt. II, § 13 (emphasis added). And when “any subject  
20 shall be embraced in an act which shall not be express in the title, such act shall be void  
21 only as to so much thereof as shall not be embraced in the title.” *Id.* Although Section 13  
22 “should be interpreted liberally so as to uphold the constitutionality of an act if there is any  
23 legal basis for its validity, constitutional provisions will not be interpreted ‘so foolishly  
24 liberal[ly] . . . as to render the constitutional provision nugatory.’” *State v. Sutton*, 115 Ariz.  
25 417, 419 (1977) (alterations in original) (citations omitted).

26           “The purpose of the above-mentioned section of the Constitution is that no law shall  
27 be amended unless its title gives notice of the general subject dealt with by the act.”  
28 *Hancock*, 31 Ariz. at 399–400. Arizona’s founders worried that “[a] voluminous act would

1 be introduced and given an appropriate title, and then somewhere in the body of the act  
2 would be hidden a clause dealing with a subject entirely foreign to that expressed in the  
3 title.” *Id.* at 400. “The average legislator, being only human,” in this situation “would  
4 examine the title, and, seeing it dealt with a subject apparently laudable, or, at the worst,  
5 innocuous in its nature, would pay but little attention to the exact language of the act itself,  
6 and thus might vote for a bill in utter ignorance of its true provisions.” *Id.* And this practice  
7 posed an even greater threat to “the private individuals who might be greatly interested in  
8 the hidden ‘joker’ in the bill.” *Id.*

9       Amendatory acts, as relevant here, satisfy the Title Requirement “when they refer to  
10 the section which they amend by chapter and section number only.” *Id.* at 401. But this  
11 mere reference, alone, is insufficient. “The amendment[] [also] must be germane to the  
12 subject of the section amended.” *Id.* And “[w]hen the title particularizes some of the  
13 changes to be made by amendment, the legislation is limited to the matters specified and  
14 anything beyond them is void, however germane it may be to the subject of the original  
15 act.” *Sutton*, 115 Ariz. at 419–20.

16       Here, the Act’s title does precisely that. The Act contains a lengthy title referring to  
17 the statutes affected and to (apparently) the subject of appropriations and criminal-justice  
18 budget reconciliation:

19       AMENDING TITLE 11, CHAPTER 2, ARIZONA REVISED STATUTES,  
20 BY ADDING ARTICLE 15; AMENDING SECTIONS 12-109 AND 12-115,  
21 ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 1,  
22 ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION  
23 12-117.01; AMENDING SECTION 12-284.01, ARIZONA REVISED  
24 STATUTES; REPEALING SECTION 12-284.02, ARIZONA REVISED  
25 STATUTES; AMENDING TITLE 12, CHAPTER 2, ARTICLE 7,  
26 ARIZONA REVISED STATUTES, BY ADDING SECTION 12-270;  
27 AMENDING SECTIONS 13-1414, 21-202 AND 21-222, ARIZONA  
28 REVISED STATUTES; AMENDING TITLE 26, CHAPTER 1, ARTICLE  
1, ARIZONA REVISED STATUTES, BY ADDING SECTION 26-105;  
AMENDING TITLE 26, CHAPTER 1, ARTICLE 3, ARIZONA REVISED  
STATUTES, BY ADDING SECTION 26-183; AMENDING SECTION 31-  
227, ARIZONA REVISED STATUTES; AMENDING TITLE 31,  
CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE

1 7; REPEALING TITLE 31, CHAPTER 2, ARTICLE 7, ARIZONA  
2 REVISED STATUTES; *AMENDING SECTION 38-1117, ARIZONA*  
3 *REVISED STATUTES, AS ADDED BY LAWS 2021, CHAPTER 322,*  
4 *SECTION 1; AMENDING SECTION 38-1161, ARIZONA REVISED*  
5 *STATUTES, AS ADDED BY LAWS 2021, CHAPTER 338, SECTION 1;*  
6 *AMENDING SECTIONS 41-194.01 AND 41-1733, ARIZONA REVISED*  
7 *STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2,*  
8 *ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1734;*  
9 *AMENDING TITLE 41, CHAPTER 12, ARTICLE 5, ARIZONA REVISED*  
10 *STATUTES, BY ADDING SECTION 41-1772; AMENDING SECTION 45-*  
11 *252, ARIZONA REVISED STATUTES; AMENDING LAWS 2018,*  
12 *CHAPTER 278, SECTION 14, AS AMENDED BY LAWS 2019,*  
13 *CHAPTER 268, SECTION 6 AND LAWS 2020, CHAPTER 51, SECTION*  
14 *4; AMENDING LAWS 2018, CHAPTER 278, SECTION 17;*  
15 *APPROPRIATING MONIES; RELATING TO CRIMINAL JUSTICE*  
16 *BUDGET RECONCILIATION.*

17 H.B. 2893 at i (emphases added). By identifying the Act’s provisions “appropriating  
18 monies; relating to criminal justice budget reconciliation,” *id.* (capitalization omitted), the  
19 title “particularizes some of the changes to be made by amendment,” *Sutton*, 115 Ariz. at  
20 419–20. As such, “the [Act] is limited to the matters specified and anything beyond them is  
21 void.” *Id.* In other words, the Act cannot extend to amendments that neither “appropriat[e]  
22 monies” nor “relat[e] to criminal justice budget reconciliation.”

23 But Sections 16, 17, and 18 of the Act do precisely that, and none falls within that  
24 scope set in the Act’s title. Section 16 limits who may investigate law enforcement officers  
25 (adding certain “person[s],” “agenc[ies],” and “department[s]” and narrowing an  
26 exemption). Section 17 changes the qualifications for civilian appointees to civilian review  
27 boards. And Section 18 allows legislators to challenge the “written policy, written rule or  
28 written regulation” of certain political subdivisions. None of these amendments relates to  
“appropriati[ons]” or “criminal justice budget reconciliation,” as the Act’s title promises.  
*See Sutton*, 115 Ariz. at 419 (holding that an act’s title “prescribing penalties for a theft of  
a credit card” “thereby narrowed and restricted the subject matter” and voided the act’s  
provision “add[ing] the crime of possession of a credit card with intent to defraud”).

The City therefore is likely to succeed on its Title Requirement claim.

1           **B.     The Act Violates Section 20.**

2           The Act also violates Section 20 by combining various appropriations and non-  
3 appropriations provisions that lack any unifying appropriative purpose. Again, Section 20  
4 establishes the following requirements for State budget bills: “The general appropriation  
5 bill shall embrace nothing but appropriations for the different departments of the state, for  
6 state institutions, for public schools, and for interest on the public debt. All other  
7 appropriations shall be made by separate bills, each embracing but one subject.”

8           Section 20 governs the Act because it contains appropriations. The Act was enacted  
9 as part of the annual State budget and—by its title and text—“appropriat[es] monies.” H.B.  
10 2893 at i. “An appropriation is ‘the setting aside from the public revenue of a certain sum  
11 of money for a specified object, in such manner that the executive officers of the  
12 government are authorized to use that money, and no more, for that object, and no other.’”  
13 *Rios v. Symington*, 172 Ariz. 3, 6 (1992) (quoting *Hunt v. Callaghan*, 32 Ariz. 235, 239  
14 (1927)). The three “essential parts” of an appropriation “are the ‘certain sum,’ the ‘specified  
15 object,’ and the ‘authority to spend.’” *League of Ariz. Cities & Towns v. Martin*, 219 Ariz.  
16 556, 560 ¶ 15 (2009) (quoting *Rios*, 172 Ariz. at 7). Relevant here, a provision that reduces  
17 a prior appropriation, *id.* at 560–61 ¶ 16, or that establishes a discrete “special fund,” *Rios*,  
18 172 Ariz. at 7–8, constitutes an appropriation.

19           Multiple sections of the Act meet these requirements and constitute appropriations.  
20 For example, Section 24 decreases from \$3.15 million to \$2.6 million a previous  
21 appropriation to the Supreme Court for the purpose of “design[ing], implement[ing] and  
22 upgrad[ing] a new appellate case management system,” and extends the appropriation  
23 through fiscal year 2021–2022. And several sections create or modify discrete funds for  
24 specific agencies to use for limited purposes. *See* H.B. 2893 §§ 4, 5, 7, 10, 11, 12, 14, 19.

25           Because the Act contains appropriations, they must be “separate” and “embrac[e]  
26 but one subject.” Ariz. Const. art. IV, pt. II, § 20. This single-subject requirement is similar  
27 to (though distinguishable from) the one discussed above under Section 13. *See Litchfield*,  
28 125 Ariz. at 226. And the Act *at least* violates Section 20 for the same reasons explained

1 above—by directing at least ten state agencies to take actions related to widely varying  
2 objectives, ranging from border security to Arizona’s appellate case management system.  
3 Similarly, “[t]here is no single ‘general design’ in the various provisions of” the Act. *Id.* at  
4 225; *see also Bennett*, 206 Ariz. at 528 & nn.8–9 (concluding that three ORBs similar to  
5 the BRB here, which purported to address budget reconciliation related to “Education” and  
6 “Health and Welfare,” “on their face . . . appear[ed] to address multiple subjects”).

7         Moreover, Section 20 imposes a more rigorous standard than Section 13’s Single  
8 Subject Rule. Whereas Section 20 requires that appropriations “be made by separate bills  
9 [that each] embrac[e] but one subject,” Section 13 requires that “[e]very act shall embrace  
10 but one subject *and matters properly connected therewith*” (emphasis added)—leeway  
11 nowhere found in Section 20. Thus, by its plain language, Section 20 imposes a more  
12 stringent standard, requiring that a non-general appropriations bill must be made  
13 “separate[ly]” from other special appropriations and must embrace a single subject that does  
14 not encompass matters simply “connected” to that subject. *See City of Surprise v. Ariz.*  
15 *Corp. Comm’n*, 246 Ariz. 206, 211 ¶ 13 (2019) (“*Expressio unius est exclusio alterius*—  
16 the expression of one item implies the exclusion of others—is appropriate when one term  
17 is reasonably understood as an expression of all terms included in the statutory grant or  
18 prohibition.”); *see also Brewer*, 209 Ariz. at 244 ¶¶ 6–7 (holding that the “separate  
19 amendment rule” of Article 21 of the Arizona Constitution “differs from” and imposes “a  
20 stricter test” than Section 13’s Single Subject Rule because “Article 21 includes no  
21 reference to matters ‘connected with,’” as Section 13 contains).

22         This conclusion is bolstered by the principle of statutory interpretation that courts  
23 “must ‘give meaning, if possible, to every word and provision so that no word or provision  
24 is rendered superfluous.’” *Garcia v. Butler*, 251 Ariz. 191, ¶ 12 (2021) (quoting *Nicaise v.*  
25 *Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019)). Sections 13’s and 20’s single-subject rules thus  
26 must impose distinct requirements, or else one would be rendered superfluous. Finally, this  
27 stricter standard also makes sense based on elevated concerns with the financial incentives  
28 of appropriations. *See Sellers*, 42 Ariz. at 246–47 (“[I]f the practice of incorporating

1 legislation of general character in an appropriation bill should be allowed, then all sorts of  
2 ill conceived, questionable, if not vicious, legislation could be proposed with the threat, too,  
3 that, if not assented to and passed, the appropriations would be defeated.” (citation  
4 omitted)).

5 In any event, because the Act fails even under Section 13’s base standard, the Act  
6 cannot satisfy Section 20’s heightened standard for appropriations bills and therefore is  
7 invalid. *See Litchfield*, 125 Ariz. at 225–26 (declaring an entire special appropriations bill  
8 invalid under Section 20 where there was no “realistic commonality between” its  
9 miscellaneous provisions).

## 10 **II. The City Will Suffer Irreparable Harm Absent an Injunction.**

11 *Second*, the City will suffer irreparable harm absent the entry of a preliminary  
12 injunction enjoining enforcement of the Act. This is because, absent an injunction, the City,  
13 impacted in its policymaking and management by an unconstitutionally adopted law, will  
14 suffer injuries that will not be “remediable by damages.” *IB Prop. Holdings, LLC v. Rancho*  
15 *Del Mar Apartments Ltd.*, 228 Ariz. 61, 65 ¶ 10 (App. 2011) (citation omitted).

16 Most critically, the Act will irreparably harm the City by obstructing the essential  
17 operations of the OAT. Again, the Act affects the application and implementation of the  
18 Ordinance establishing the OAT. For instance, the Ordinance prohibits the OAT’s “Director  
19 [and] any employees in the OAT’s office” from “hav[ing] formerly been employees of any  
20 law enforcement agency,” Ord. at 4 (City Code § 20-5(D)), whereas the Act requires certain  
21 the OAT employees to in fact “be Arizona peace officer standards and training board  
22 certified law enforcement officers who are of any rank and who are from the same  
23 department or agency as the law enforcement officer who is the subject of the investigation  
24 or disciplinary action,” H.B. 2893 § 16. As a result, the City is unable to, among other  
25 things, staff the OAT in the manner that it desires, Ex. C ¶ 18—and that City law requires.

26 The City’s inability to staff and compose the OAT in the manner it desires is an  
27 “[i]ntangible injury” that “lack[s] an adequate legal remedy.” *E. Bay Sanctuary Covenant*  
28 *v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021) (quoting *Ariz. Dream Act Coal. v. Brewer*, 757



1 F.3d 1053, 1068 (9th Cir. 2014)); *see id.* (holding that an organization suffering a  
2 “significant change in [its] programs” was an intangible and irreparable injury).

3 Furthermore, “an alleged constitutional infringement will often alone constitute  
4 irreparable harm.” *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997)  
5 (quoting *Assoc. Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401,  
6 1412 (9th Cir. 1991)). Here, where the City is poised to have its critical management and  
7 policy choices preempted by unconstitutionally adopted laws, irreparable harm is an  
8 inherent result of that unconstitutional legislation. *E.g.*, *New Orleans Pub. Serv., Inc. v.*  
9 *Council of City of New Orleans*, 491 U.S. 350, 366 (1989) (“Irreparable injury may possibly  
10 be established . . . by a showing that the challenged state statute is ‘flagrantly and patently  
11 violative of express constitutional prohibitions[.]’” (citation omitted)).

### 12 **III. The Public Interest and Balance of Equities Tip Sharply in the City’s Favor.**

13 *Finally*, both the balance of hardships and public interest favor granting the  
14 injunction. The City—and all Arizonans—have an interest in preventing the  
15 implementation of unconstitutional laws. On the other hand, neither the State nor Attorney  
16 General “can claim an interest in the enforcement of an unconstitutional law.” *ACLU v.*  
17 *Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) (citation omitted). In the end, “granting  
18 preliminary injunctive relief here is in the public interest because the enforcement of an  
19 unconstitutional law vindicates no public interest.” *K.A. ex rel. Ayers v. Pocono Mountain*  
20 *Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013); *see also Fontes*, 250 Ariz. at 309 ¶ 27  
21 (“[B]ecause the [Arizona official]’s action does not comply with Arizona law, public policy  
22 and the public interest are served by enjoining his unlawful action.”).

### 23 **Conclusion**

24 The Court should grant this Motion and enjoin Defendants from enforcing the Act.  
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Dated: August 17, 2021

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