



Board of Supervisors Memorandum

August 15, 2016

**Settlement Agreement with the State of Arizona Regarding
the One-percent Constitutional Property Tax Limit Litigation**

Background

As I recently advised the Board of Supervisors, the State of Arizona will not appeal the decision of the Maricopa Superior Court regarding this matter, and a Settlement Agreement has been prepared to permanently resolve this litigation.

The proposed Settlement Agreement is attached for Board of Supervisors review and action.

On May 5, 2015, the Board of Supervisors voted 4 to 1 to authorize litigation against the State based on the State's Fiscal Year 2015/16 Budget that required, for the first time, other taxing and political subdivisions of the State, including counties, to pay property taxes for education. Historically, the State has funded education in Arizona, along with the respective educational taxing jurisdictions, including school districts and community colleges.

At the time this legislation was passed by the Arizona Legislature and signed into law by the Governor, we believed it was clearly unfair to require County taxpayers to pay for public education expenses the State previously financed. We also believed the legislation passed was unconstitutional; hence, the challenge.

Due to the urgency of adopting the previous year's budget, the County petitioned the Arizona Supreme Court in Special Action CV-15-0174-SA for immediate review of the constitutionality of the proposed State cost transfer to Pima County. The Supreme Court declined to review the case and Pima County was assessed the State's attorney's fees in the amount of \$53,151.

On May 23, 2016, the Maricopa Superior Court ruled the budget law that required this property tax transfer from the State to the counties unconstitutional. The Court reaffirmed its decision in a July 8, 2016 Final Judgment. The State could have objected to this decision, but notified County counsel on August 4, 2016 that it would not do so. However, the State will briefly appeal on August 8, 2016, but will withdraw their appeal when the PTOC approves the settlement at their August 9, 2016 meeting.

As a result of this litigation, Pima County is now able to avoid \$32 million of State cost transfers, which would have been the amount required in the previous fiscal year and this fiscal year had the budget law approved by the State Legislature and signed by the Governor remained unchallenged. This victory is primarily what has allowed Pima County to decrease

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Settlement Agreement with the State of Arizona Regarding One-percent Constitutional
Property Tax Limit Litigation**

August 15, 2016

Page 2

our primary property tax rate by 20 cents from what had been recommended for this fiscal year.

Our lobbyist has also developed a coalition of stakeholders who would have been adversely impacted by this action; not only in the last two years, but in future years. We are confident the coalition is strong enough to dissuade future Legislatures from attempting to transfer educational costs from the State to other taxing jurisdictions.

Recommendation

I recommend the Board of Supervisors approve the attached Settlement Agreement to permanently resolve Maricopa Court Case CV2015-009739.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/anc – August 8, 2016

Attachment

c: Thomas Weaver, Chief Civil Deputy County Attorney
Regina Nassen, Deputy County Attorney
Joseph Kanefield, Ballard Spahr, LLP
Michael Racy, Racy Associates, Inc.
Craig Sullivan, Executive Director, County Supervisors Association of Arizona

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into and effective August __, 2016, between and among Pima County and Clarence Downy Klinefelter (collectively, “Plaintiffs”), on the one hand, and the State of Arizona, Property Tax Oversight Commission (“PTOC”), David Briant, Jim Brodnax, Jeff Lindsey, Kevin McCarthy, and Chris Kelling (collectively, “Defendants”), on the other hand. Plaintiffs and Defendants are sometimes referred to herein collectively as the Parties and individually as a Party.

RECITALS

As an integral part of this Agreement, the Parties do agree and acknowledge as follows:

WHEREAS Plaintiffs and Defendants are litigants in the Maricopa County Superior Court (the “Court”), Case No. CV2015-009739 (the “Litigation”), arising from Senate Bill 1476 passed in 2015;

WHEREAS Plaintiffs filed a Motion for Summary Judgment in the Litigation on December 23, 2015, which was granted by the Court on May 23, 2016, and final judgment in the Litigation was entered in favor of the Plaintiffs on July 8, 2016 (the “Judgment”); and

WHEREAS the Parties have reached a settlement and seek, by this Settlement Agreement, to permanently resolve the Litigation.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Defendants agree to reimburse Pima County for the \$53,151.00 in attorneys’ fees that Pima County paid to Defendants in the Arizona Supreme Court Special Action No. CV-15-0174-SA, and otherwise absorb their own fees and costs in this Litigation.
2. Defendants agree to dismiss the notice of appeal they filed in this matter on August 8, 2016, and Plaintiffs agree not to seek any additional relief by way of a cross-appeal. Defendants agree to withdraw their Amended Application for Attorneys’ Fees that is pending in the Litigation. The Parties will absorb their own attorneys’ fees and costs in this Litigation.
3. Pima County agrees to dismiss its Notice of Appeal and Request for Formal Evidentiary Hearing in the matter of March 14, 2016 transfer to school districts pursuant to A.R.S. § 15-972(K), filed with the PTOC on or about April 22, 2016.
4. The Parties represent and warrant to the other that:

- a. This Settlement Agreement constitutes the entire, final and binding understanding between the Parties hereto; no other statement or representation, written or oral, express or implied, has been received or relied upon in connection with this Settlement Agreement, and all prior discussions, statements, and negotiations made or which have occurred prior to the date of the Settlement Agreement shall be deemed merged into this Settlement Agreement and the documents referred to herein, and shall not be used for any other purpose whatsoever;
- b. The Parties understand and agree to the terms of this Settlement Agreement and the terms and conditions contained herein. The parties have relied upon their own judgment, belief, knowledge, understanding and expertise in agreeing to the terms of this Settlement Agreement and have conferred with counsel regarding their agreement to the terms of this Settlement Agreement;
- c. The Parties agree to the terms of this Settlement Agreement knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion or undue influence and after careful thought and reflection upon the terms of this Settlement Agreement, and accordingly, by signing this Settlement Agreement, each Party signifies full understanding, agreement and acceptance; and
- d. The Parties have investigated the facts pertaining to this Settlement Agreement and all matters pertaining thereto as deemed necessary by each.

5. The undersigned agree to and do hereby bind their respective successors, heirs, administrators, executors, assigns and personal representatives to this Settlement Agreement and to each of its terms and conditions.

6. In the event of any litigation or legal proceedings to enforce or interpret this Settlement Agreement, the prevailing party shall be entitled to recover his or its reasonable attorneys' fees and taxable court costs.

7. This Settlement Agreement, and the documents referred to herein, shall be governed by and construed and interpreted in accordance with, the laws of the State of Arizona.

8. In the event that any provision of this Settlement Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

9. This Settlement Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

10. No aspect of this Settlement Agreement should be construed more favorably toward

either Plaintiffs or Defendants based on the Party that drafted this Settlement Agreement.

11. No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Settlement Agreement. The Settlement Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

12. Notwithstanding any other provision of this Settlement Agreement, the Parties acknowledge and agree that this Settlement Agreement does not, and shall not be construed to constitute an admission of liability or fault of any kind whatsoever by any of the Parties, and is made solely for the purpose of compromising, settling, and ending the disputes at issue.

The undersigned have read the above Settlement Agreement in its entirety, understand its terms and hereby sign it voluntarily.

| | |
|----------------------------|-----------------------------------|
| Pima County | The State of Arizona |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| Clarence Downy Klinefelter | Property Tax Oversight Commission |
| | By: _____ |
| | Title: _____ |
| | David Briant |
| | Jim Brodnax |
| | Jeff Lindsey |

| | |
|--|----------------|
| | Kevin McCarthy |
| | Chris Kelling |
| | |