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19 **SUPERIOR COURT OF ARIZONA**

20 **MARICOPA COUNTY**

21 ARIZONA FREE ENTERPRISE CLUB, *et*
22 *al.*,

23 Plaintiffs,

24 v.

25 KATIE HOBBS, in her capacity as the
26 Secretary of State of Arizona, *et al.*

27 Defendants.

Case No: CV2021-011491

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF
ARIZONA ATTORNEY GENERAL
MARK BRNOVICH**

(Assigned to the Honorable Katherine
Cooper)

28 Arizona Attorney General Mark Brnovich moves for leave to file an Amicus
Curiae Brief in support of Plaintiffs' request to enjoin Defendants from referring tax

1 measures, Senate Bills (“S.B.”) 1828, S.B. 1827,¹ and S.B. 1783. The proposed amicus
2 brief is attached as **Exhibit A**. Plaintiffs consent to this the filing of the amicus brief.
3 Defendants do not oppose the filing of the amicus brief.

4 The Attorney General’s interest in this case arises from his position as the State’s
5 chief legal officer, A.R.S. § 41–192(A), and his duty to uphold the Arizona Constitution
6 and the laws of the state, *see* A.R.S. § 38–231. The Attorney General has an interest in
7 ensuring that Arizona courts consistently apply state law and interpret the Arizona
8 Constitution consistent with its original meaning. *See* A.R.S. § 41–193(A)(2) (granting
9 the attorney general power to represent the State in any state court proceeding where the
10 State has an interest in such proceeding); Ariz. Const. art. 5, § 9. Additionally, the
11 Attorney General has an interest in seeing that state tax measures approved by the
12 Legislature are implemented without interruption. The Attorney General also oversees
13 the Attorney General’s Office—Arizona’s largest law firm—which will be funded in
14 large part by the revenue raised by the tax measures at issue.

15 The Attorney General supports Plaintiffs’ position that the Arizona Constitution
16 does not allow Defendants to refer any of the tax measures at issue to the people. As
17 discussed in the attached amicus brief, first and foremost, Arizona case law interpreting
18 Article 4, part 1, section 1, subsection 3 holds that tax measures are measures for the
19 “support of maintenance” of the government, and thus are not subject to referendum.
20 Second, persuasive authority—including prior opinions of the Arizona Attorney General
21 and case law from jurisdictions with similar constitutional provisions—further supports
22 that tax measures cannot be referred to the people. Finally, this Court must reject any
23 speculative argument that the tax measures here are not for the “support and
24 maintenance” of the government because they may reduce the amount of state revenue.

25 ¹ Because Invest in Arizona failed to gather enough signatures to refer S.B. 1827 to the
26 people, the legal issue whether S.B. 1827 is appropriate for referendum under the
27 Arizona Constitution is now likely moot. Because the pleadings and motion for
28 preliminary injunction still discuss all three referenda, the attached amicus brief does as
well. The legal analysis contained therein, however, does not turn on whether one, two,
or three of the referenda remain active.

1 Such a conclusion would violate separation of powers and requires courts to engage in
2 guesswork about the future and unknown fiscal and economic impact of tax measures.

3 Accordingly, the Attorney General respectfully moves for leave to file the
4 attached amicus brief in support of Plaintiffs.

5
6 Respectfully submitted this 1st day of October, 2021.

7 MARK BRNOVICH
8 ATTORNEY GENERAL

9 *s/ Michael S. Catlett*

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1 I hereby certify that the foregoing document
2 was e-filed this 1st day of October, 2021,
3 via TurboCourt.

4 Copy of the same served via email this 1st
5 day of October, 2021, to:

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