

1 Roopali H. Desai (024295)  
D. Andrew Gaona (028414)  
2 Kristen Yost (034052)  
**COPPERSMITH BROCKELMAN PLC**  
3 2800 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004  
4 T: (602) 381-5478  
rdesai@cblawyers.com  
5 agaona@cblawyers.com  
kyost@cblawyers.com  
6

7 Daniel J. Adelman (011368)  
**ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST**  
352 East Camelback Road, Suite 200  
8 Phoenix, Arizona 85012  
9 T: (602) 258-8850  
danny@aclpi.org

10 *Attorneys for Plaintiffs Invest in Arizona (Sponsored*  
11 *by AEA and Stand for Children) and David Lujan*

12 **ARIZONA SUPERIOR COURT**

13 **MARICOPA COUNTY**

14 INVEST IN ARIZONA (Sponsored by AEA ) No.  
15 and Stand for Children), an Arizona political )  
16 action committee; and DAVID LUJAN, an )  
Arizona resident, ) **MOTION FOR PRELIMINARY**  
17 ) **INJUNCTION**  
Plaintiffs, )  
18 v. )  
19 THE ARIZONA DEPARTMENT OF )  
20 REVENUE, an agency of the State of Arizona; )  
ROB WOODS, in his official capacity as the )  
21 Director of the Arizona Department of )  
Revenue; and STATE OF ARIZONA, a body )  
22 politic, )  
23 Defendants. )

24 **Introduction**

25 Arizona has a strong public policy favoring the initiative. Since statehood, “the people  
26 themselves deliberately and intentionally announced that,” by adopting the Arizona Constitution,

1 “they meant to exercise their supreme sovereign power directly to a far greater extent than had  
2 been done in the past, and that the legislative authority, acting in a representative capacity only,  
3 was in all respects intended to be subordinate to direct action by the people.” *Whitman v. Moore*,  
4 59 Ariz. 211, 218 (1942), *overruled on other grounds by Renck v. Superior Court*, 66 Ariz. 320,  
5 327 (1947). To protect this fundamental right – and after decades of the Arizona Legislature  
6 meddling with and undermining measures approved at the ballot box – Arizonans adopted the  
7 Voter Protection Act (“VPA”) as a constitutional amendment to limit the Legislature’s power to  
8 amend, supersede, or repeal voter-approved laws. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14).

9 Despite this clear limit on its power, the Legislature passed SB 1783 to interfere with the  
10 voters’ clear intent in passing Proposition 208, known as the “Invest in Education Act” (“Prop  
11 208”). Fed up with the Legislature’s glaring failure to fund public education in our state, the  
12 People stepped in to fund our schools. Through Prop 208, the voters imposed a 3.5% surcharge  
13 on all individual taxable income above (1) \$250,000 for single filers or filers who are married  
14 but filing separately, and (2) \$500,000 for married or head of household filers. The surcharge  
15 was intended to apply to every dollar of an individual’s taxable income above these threshold  
16 amounts. In response, the Legislature passed SB 1783 to create giant loopholes for individuals  
17 to report income through brand new taxation schemes and avoid the Prop 208 surcharge. The  
18 Legislature’s flagrant attempt to gut the source of revenue at the heart of Prop 208 amends or  
19 supersedes a voter-approved law. And because SB 1783 passed with only a simple majority vote,  
20 it violates the VPA and the Court should enjoin it.

## 21 **Factual Background**

### 22 **I. The Voters Pass Prop 208 to Give Desperately-Needed Funding to Our Schools.**

23 After decades of cuts to Arizona’s public education system, Arizona consistently ranks at  
24 or near the bottom in per pupil funding and teacher pay. [Compl. ¶ 22] A teacher walkout in  
25 2018 inspired the bare minimum of action by the Legislature, but it wasn’t enough for teachers,  
26 students, or the people of Arizona. In the middle of a global pandemic, more than 435,000

1 Arizonans signed petitions for the Invest in Education Act, later known as Prop 208. [*Id.* ¶¶ 23-  
2 24] After the measure survived a pre-election challenge seeking to block Prop 208 from  
3 appearing on the 2020 General Election ballot, more than 1.6 million Arizonans voted “yes” and  
4 approved Prop 208 at the polls. [*Id.* ¶ 25]

5 Prop 208 imposes an income tax surcharge on certain high earners to provide desperately  
6 needed additional resources to Arizona’s public schools through targeted grants to school  
7 districts and charter schools. [*Id.* ¶ 26] As Jodi Hekter, President of the Florence Education  
8 Association, argued in support of Prop 208 in the Publicity Pamphlet:

9 Arizona spends \$800M less on education than it did a decade ago. With cuts to  
10 school funding, we’ve seen the worst teacher shortage in history, rising class sizes,  
11 and valuable school programs and services eliminated. . . . Arizonans are in  
12 unprecedented times and now, voters have a chance to take action for students and  
13 teachers with the Invest in Education initiative, which adds dedicated resources for  
14 our public schools that politicians can’t cut.<sup>1</sup>

15 In short, Prop 208 imposes an income tax surcharge of 3.5% on “taxable income” over  
16 (a) \$250,000 for single filers or filers who are married but filing separately, and (b) \$500,000 for  
17 married and head of household filers. A.R.S. § 43-1013(A). The revenues collected under the  
18 Prop 208 surcharge will be distributed to school districts and charter schools to be used for things  
19 like hiring and raising salaries for teachers and other school personnel. A.R.S. § 15-1281(B).

20 Arizona Revised Statutes Title 43, Chapter 10 governs the income tax rates on the taxable  
21 income of “individuals.” Chapter 10 defines “taxable income” as an individual’s “Arizona gross  
22 income,” subject to certain modifications and deductions. A.R.S. § 43-1001(1), (11). At the time  
23 Prop 208 passed, Chapter 10 was the only chapter in Title 43 that applied to individual taxable  
24 income.

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25 <sup>1</sup> 2020 General Election Publicity Pamphlet,  
26 [https://azsos.gov/sites/default/files/2020\\_General\\_Election\\_Publicity\\_Pamphlet\\_English.pdf](https://azsos.gov/sites/default/files/2020_General_Election_Publicity_Pamphlet_English.pdf)  
(last visited July 21, 2021).

1 Chapter 10 also prescribes tax rate brackets for the taxes to be levied “on the entire taxable  
2 income of every resident of this state” based on the individual’s taxable income level. A.R.S. §  
3 43-1011. Recognizing that the Legislature may adjust these tax rate brackets, the voters  
4 mandated that the surcharge “must be collected regardless of whether the income tax rate  
5 brackets in this chapter are changed, replaced or eliminated by an act of the legislature.” A.R.S.  
6 § 43-1013(C).

7 The surcharge was intended to be levied “[i]n addition to any other tax imposed by this  
8 chapter”—*i.e.*, the only chapter in Title 43 governing the income taxes of “individuals.” Separate  
9 chapters in Title 43 govern taxable income for corporations (Chapter 11), tax exempt  
10 organizations (Chapter 12), and estates and trusts (Chapter 13). At the time Prop 208 passed,  
11 Chapter 13 provided that “[e]xcept for trusts that are taxable as partnerships or corporations  
12 under the internal revenue code, the taxes imposed by this title upon individuals apply to the  
13 income of estates or of any kind of property held in trust.” A.R.S. § 43-1311(A).

## 14 **II. The Legislature’s Attempts to Undermine the Will of the Voters.**

15 This legislative session, the Legislature attacked Prop 208 from all angles. To reduce  
16 income tax revenue, the Legislature passed – and the Governor signed – two bills that reduce the  
17 income tax rates for wealthy Arizonans, including a 2.5% flat tax rate and a 4.5% cap on the  
18 “combined” income tax rate for filers subject to the Prop 208 surcharge. *See* SB 1827 55th Leg.,  
19 1st Reg. Sess. (Ariz. 2021); SB 1828, 55th Leg., 1st Reg. Sess. (Ariz. 2021). These bills are not  
20 at issue in this case, but provide important context.

21 On top of reducing the individual income tax rates, the Legislature passed – and the  
22 Governor signed – SB 1783, which creates a giant loophole for filers to reclassify certain  
23 individual income and avoid the Prop 208 surcharge. SB 1783 creates a new chapter in Title 43  
24 (Chapter 17) titled “Small Businesses.” This new Chapter 17 creates an alternative form of  
25 income tax for “Arizona small business taxable income,” which allows individual filers with  
26 certain income to opt to be taxed under this alternative tax scheme instead of regular income tax

1 set forth under Title 43, Chapter 10.

2 SB 1783 defines this alternative “Arizona small business gross income” to include large  
3 categories of income, including “interest and ordinary dividends,” “profit or loss from business,”  
4 “supplemental income or loss,” “profit or loss from farming,” “sale of business property,” “farm  
5 rental income and expenses,” certain “capital gains and losses” and “disposition of capital assets  
6 used in connection with a trade or business activity[.]” Unless a taxpayer opts to be taxed under  
7 SB 1783, these categories of income for individual taxpayers would be considered individual  
8 “taxable income” under Title 43, Chapter 10.

9 SB 1783 also amends A.R.S. § 43-1311 to no longer require that, except for trusts taxable  
10 as partnerships or corporations, “the taxes imposed by [Title 43] upon individuals apply to the  
11 income of estates or of any kind of property held in trust.” Instead, this taxable income “is subject  
12 only to the income tax imposed by” SB 1783. (Emphasis added). Before SB 1783, this income  
13 would be considered individual “taxable income” under Title 43, Chapter 10 and amounts above  
14 the Prop 208 threshold would be subject to the 3.5% surcharge. *See* A.R.S. § 43-1311(A), (B).

15 In other words, SB 1783 excludes large categories of individual income from the “taxable  
16 income” that voters intended to tax. The Joint Legislative Budget Committee (“JLBC”) estimates  
17 that, for households subject to the Prop 208 surcharge, around 35% of their taxable income could  
18 qualify under SB 1783. [*See* Compl. Exhibit 2] Thus, the JLBC expects that SB 1783 will reduce  
19 “Proposition 208 revenues . . . by an estimated **\$292 million.**” [*Id.* (emphasis added)]

20 As SB 1783 made its way through the legislative process, many legislators recognized  
21 that the bill implicates the VPA. At a Senate Finance Committee meeting in February, Senator  
22 Kirsten Engel accurately described SB 1783 as an “end run around Prop 208.”<sup>2</sup> On the Senate  
23 floor on February 24, Senator Martin Quezada likewise described SB 1783 as a “direct attack on

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25 <sup>2</sup> *See* 2/17/2021 Senate Fin. Mtg.,  
26 <https://www.azleg.gov/videoplayer/?eventID=2021021117&startStreamAt=10392>, at 3:05:41  
(last visited July 20, 2021).

1 the Invest in Education Act” that “undermines the will of the voters and divests this funding that  
2 is so badly and desperately needed” for education.<sup>3</sup> A Senate Rules attorney also cautioned  
3 legislators that the Prop 208 surcharge is voter-protected, that the most important takeaway from  
4 the VPA is that “voter intent is critical,” and that “statutes can be amended . . . indirectly as  
5 well.”<sup>4</sup>

6 At a House Ways and Means Committee meeting on March 24, Scot Mussi, the president  
7 of the Free Enterprise Club and proponent of SB 1783, explained that the “elephant in the room”  
8 is that SB 1783 responds to the passage of Prop 208.<sup>5</sup> During this meeting, another member of  
9 the public, Reverend Hunter Ruffin, expressed his community’s concern that SB 1783 is a “tax  
10 dodge” that “disrespects the will of the state’s voters” mere months after the passage of Prop  
11 208. *Id.* at 2:35:10. House Ways and Means Committee Chair Shawna Bolick interrupted  
12 Reverend Ruffin and tried to prevent him or other members of the committee from even  
13 mentioning Prop 208 for the rest of the meeting. *Id.* at 2:39:19. In response to Representative  
14 Bolick’s ban on discussing Prop 208, Representative Andrés Cano pointed out that the JLBC’s  
15 fiscal note on SB 1783 expressly references Prop 208, and posed the question to his fellow  
16 committee members: “what are we scared of?” *Id.* at 2:41:20.

17 What’s more, on the House floor on June 25, many Representatives voiced their  
18  
19

20 \_\_\_\_\_  
21 <sup>3</sup> See 2/24/2021 Senate COW,  
22 <https://www.azleg.gov/videoplayer/?eventID=2021021166&startStreamAt=2981>, at 51:10 (last  
visited July 20, 2021).

23 <sup>4</sup> See 2/22/2021 Sen. Rules Comm. Mtg., [https://](https://www.azleg.gov/videoplayer/?eventID=2021021146)  
24 [www.azleg.gov/videoplayer/?eventID=2021021146](https://www.azleg.gov/videoplayer/?eventID=2021021146), at 24:18 (last visited July 20, 2021).

25 <sup>5</sup> See 3/24/2021 Ways & Means Mtg.,  
26 <https://www.azleg.gov/videoplayer/?eventID=2021031117&startStreamAt=8595>, at 2:29:25  
(last visited July 20, 2021).

1 opposition to this unconstitutional law.<sup>6</sup> For example (among many others):

- 2 • Representative Mitzi Epstein explained that SB 1783 is insulting to all those who
- 3 worked so hard to get Prop 208 on the ballot and ensure its passage.
- 4 • Representative Jennifer Pawlik rightly explained that SB 1783 “creates a loophole to
- 5 limit Proposition 208 collections which the voters supported. We need to respect the
- 6 will of our voters.”
- 7 • Representative Judy Schwiebert noted that SB 1783 “is a slap in the face to . . . all 1.6
- 8 million” who voted, and a “backdoor workaround” that is “wrong for our democracy.”
- 9 • Representative Pamela Powers Hannelly explained that SB 1783 “goes against the
- 10 Voter Protection Act” and that a supermajority should be required. “This is a loophole
- 11 for 6,000 people. We are ignoring 1.7 million people in favor of 6,000 millionaires.”
- 12 • Representative Domingo Degrazia noted that the VPA “protects the will and the voice
- 13 of Arizonans,” and the Legislature “cannot do indirectly what it cannot do directly.”
- 14 SB 1783 “is an indirect way to undermine what the voters wanted.”

### 15 **Argument**

16 A party seeking a preliminary injunction must establish that (1) there is a strong  
17 likelihood of success at trial on the merits, (2) the possibility of irreparable harm that is not  
18 remedied by monetary damages, (3) the balance of hardships tips in its favor, and (4) public  
19 policy favors the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). Courts consider the  
20 likelihood of success on the merits and the possibility of irreparable harm on a sliding scale, and  
21 they will grant an injunction when the balance of hardships tips sharply in the movant’s favor  
22 with less likelihood of success, and vice versa. *Smith v. Ariz. Citizens Clean Elections Comm’n*,  
23 212 Ariz. 407, 411 ¶ 10 (2006). Plaintiffs are entitled to a preliminary injunction under either  
24 formulation of the rule. They have a strong likelihood of the success on the merits, and the

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25 <sup>6</sup> See 6/25/2021 House Floor Session,  
26 <https://www.azleg.gov/videooplayer/?eventID=2021061045> (last visited July 27, 2021).

1 consequences of this unconstitutional tax loophole will cause an irreparable hardship that tips  
2 strongly in favor of Plaintiffs and the public.

3 **III. Plaintiffs Are Likely to Succeed on Their Claim That SB 1783 Violates the VPA.**

4 **A. The VPA protects voter-approved laws from legislative changes.**

5 The framers of the Arizona Constitution were “advocates of th[e] method of popular  
6 government” known as the initiative and referendum, “and the records of the constitutional  
7 convention, together with the language of the [] constitution, show clearly that it was the opinion  
8 of the delegates who adopted and signed it that its provisions setting forth these principles were  
9 among the most important to be found therein.” *Whitman*, 59 Ariz. at 218. “When the  
10 [constitution] was submitted to the voters for ratification, that issue was again the principal one  
11 before them and the constitution was ratified by a very large percentage of the votes cast.” *Id.*  
12 As a result, and since statehood, the People of Arizona have reserved to themselves the power  
13 to “propose laws and amendments to the constitution and to enact or reject such laws and  
14 amendments at the polls, independently of the legislature,” and “for use at their own option, the  
15 power to approve or reject at the polls any act, or item, section, or part of any act, of the  
16 legislature.” Ariz. Const. art. IV, § 1(1). As a function of this constitutional reservation, “the  
17 power of the people to legislate is as great as the power of the legislature to legislate.” *Iman v.*  
18 *Bolin*, 98 Ariz. 358, 364 (1965).

19 After decades of the Legislature undermining the will of Arizona voters, in 1998 the  
20 People adopted the VPA as a constitutional amendment, limiting the legislature’s power to  
21 meddle with laws adopted by the voters. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14). Under the  
22 VPA, the Legislature cannot repeal voter-approved initiative measures, and it can amend or  
23 supersede an initiative only if the amendment “furtheres the purposes” of the initiative and the  
24 Legislature passes it with “at least three-fourths of the members of each house[.]” *Id.* The  
25 purpose of the VPA is “to limit changes to voter-approved laws,” *Meyer v. State*, 246 Ariz. 188,  
26 192 ¶ 10 (App. 2019), and to prevent the legislature from “abusing its power to amend and repeal



1 voter-endorsed measures.” *Arizona Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz.  
2 467, 469 ¶ 7 (2009). That is, “the principal purpose of the VPA is to preclude the legislature  
3 from overriding the intent of the people.” *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342,  
4 347 ¶ 9 (App. 2013), *aff’d*, 233 Ariz. 1 (2013) (“*Cave Creek I*”). The passage of the VPA thus  
5 “altered the balance of power between the electorate and the legislature[.]” *Id.*

6 Because SB 1783 passed with only a simple majority vote,<sup>7</sup> the only question is whether  
7 it amends or supersedes Prop 208. It does.

8 **B. SB 1783 amends or supersedes Prop 208 in violation of the VPA.**

9 Even if a law doesn’t expressly purport to amend a voter-approved law, courts “must  
10 consider its effect on the fundamental purposes underlying the VPA.” *Cave Creek Unified Sch.*  
11 *Dist. v. Ducey*, 233 Ariz. 1, 7 ¶ 23 (2013) (“*Cave Creek II*”) (“[T]he legislature may not do  
12 indirectly what it is prohibited from doing directly.”) (quoting *Caldwell v. Bd. of Regents*, 54  
13 Ariz. 404, 410 (1939)). And “because the legislature may not do indirectly what it is prohibited  
14 from doing directly, . . . to violate the VPA, a legislative action need not take the form of a bill  
15 which expressly purports to amend or revise a statute; rather, the primary inquiry is whether the  
16 action adds to or takes away from the voter-approved law.” *Cave Creek I* at 52 ¶ 30 (citation  
17 omitted). With these considerations in mind, the Legislature “amends” a voter-approved law  
18 when it “in substance alters, modifies, or adds to” the law. *Meyer*, 246 Ariz. at 192 ¶ 11  
19 (quotation omitted). And “a statute can be implicitly repealed or amended through ‘repugnancy’  
20 or ‘inconsistency.’ . . . ‘An implied amendment is an act which purports to be independent, but  
21 which in substance alters, modifies, or adds to a prior act.’” *Cave Creek II*, 233 Ariz. at 7 ¶ 14  
22 (citing cases and authorities with approval).

23 SB 1783 no doubt substantively alters and “takes away from” Prop 208. The voters  
24 intended to create an income tax surcharge on all individual taxable income above \$250,000 for

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26 <sup>7</sup> See Bill History for SB 1783, <https://apps.azleg.gov/BillStatus/BillOverview?SessionID=123>  
(last visited July 27, 2021).

1 single filers and \$500,000 for married or head of household filers. At the time Prop 208 passed,  
2 Chapter 10 was the only income taxation scheme that applied to individual taxable income.  
3 Through SB 1783, the Legislature will allow individuals to classify massive amounts of income  
4 under a new taxation Chapter that didn't exist when Prop 208 passed. For many wealthy  
5 Arizonans, it is essentially a get out of Prop 208 free card.

6 Arizona courts soundly reject this type of legislative meddling. In *Cave Creek*, for  
7 example, the Legislature similarly tried to take voter-protected dollars away from public  
8 education. While the Court of Appeals recognized that preparing the state's budget may be  
9 challenging, it held that "our constitution does not permit the legislature to change the meaning  
10 of voter-approved statutes by shifting funds to meet other budgeting priorities." *Cave Creek I* at  
11 353 ¶ 32. Even worse here, the Legislature isn't taking millions of voter-protected dollars away  
12 from Arizona's public schools so it can try to meet other budgeting needs; instead, it wants to  
13 keep those funds in the pockets of a few thousand wealthy individuals. But the constitution  
14 doesn't allow that in the face of a voter-approved law.

15 To be sure, the Court of Appeals has held the VPA doesn't automatically protect every  
16 statute cross-referenced in a voter-approved law. *See Arizona Advoc. Network Found. v. State*,  
17 250 Ariz. 109 ¶ 37 (App. 2020) (declining to extend VPA protection to everything cited in a  
18 voter-approved law that "cross-reference[d] more than two dozen statutes, reaching far beyond  
19 title 16, chapter 6"). But that's not even remotely the issue here. The taxable income subject to  
20 the surcharge in A.R.S. § 43-1013 is the heart of Prop 208. Unlike one of the separately defined  
21 terms in *Arizona Advoc. Network Found.* that "had little if any impact on the voter protected  
22 act," 250 Ariz. 109 ¶¶ 42-43, the scope of individual "taxable income" is no doubt "central" to  
23 Prop 208. *Id.* And SB 1783's impact will be huge. The JLBC expects that the SB 1783's tax  
24 dodge will directly reduce Prop 208 revenues by \$292 million.

25 The voters' intent in passing Prop 208 also confirms that SB 1783 amends it. *Ariz. Early*  
26 *Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470, 471 ¶¶ 10, 14 (2009) ("Our primary

1 objective in construing statutes adopted by initiative is to give effect to the intent of the  
2 electorate. . . . In determining the purpose of an initiative, we consider such materials as  
3 statements of findings passed with the measure as well as other materials in the Secretary of  
4 State’s publicity pamphlet[.]”) (quotations omitted). Unlike *Arizona Advoc. Network Found.*,  
5 where “nothing in the ballot or attendant publicity pamphlet for the 1998 election informed  
6 voters that [the voter-approved law] permanently fixed” various cross-referenced definitions,  
7 250 Ariz. ¶ 37, the opposite is true here. Arguments in the publicity pamphlet make abundantly  
8 clear that the voters intended for 3.5% of all individual taxable income the threshold levels to be  
9 permanent and voter-protected. Indeed, multiple arguments in support of Prop 208 emphasized  
10 that the VPA will protect this surcharge revenue. *See, e.g.*, Publicity Pamphlet Argument of Joe  
11 Thomas *et al.*, Sponsored by AEA (“This initiative will voter protect \$940 million new dollars  
12 for public education funding. This permanent and sustainable revenue will be used for teacher  
13 salary increases, reducing class size, and making sure students have access to nurses, counselors,  
14 and other support staff who are critical to student success.”).

15 The voters (rightly) predicted that the Legislature might adjust the individual tax rate  
16 brackets, and they mandated that the 3.5% surcharge still “must be collected regardless of  
17 whether the income tax rate brackets in this chapter are changed, replaced or eliminated by an  
18 act of the legislature.” A.R.S. § 43-1013(C) (emphasis added). And they made clear that this  
19 surcharge must be levied “[i]n addition to any other tax imposed by this chapter”—*i.e.*, the only  
20 Chapter that applies to income taxes of “individuals.” What the People didn’t anticipate,  
21 however, is that the Legislature would ignore the VPA and create a whole new taxation scheme  
22 in Title 43 to make an end run around the Prop 208 surcharge. *See State v. Maestas*, 244 Ariz. 9,  
23 12-13 ¶¶ 13-17 (2018) (rejecting State’s argument that challenged law did not violate VPA  
24 because legislature did not *directly* amend the Arizona Medical Marijuana Act). As in *Maestas*,  
25 here both the text of the challenged legislation and the legislative history make clear that the  
26 legislature is deliberately trying to alter what the voters had approved.

1 In the end, SB 1783 is precisely the kind of legislative interference the VPA is designed  
2 to prevent. Allowing the Legislature to create a loophole that guts the core component of an  
3 initiative measure would thwart the VPA’s purpose of stopping the Legislature from “abusing  
4 its power” to change voter-approved laws. *Brewer*, 221 Ariz. at 469 ¶ 7. The Court should strike  
5 down SB 1783 and enjoin Defendants from implementing it.

6 **IV. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.**

7 A violation of the VPA constitutes irreparable harm, and an injunction is the only available  
8 remedy to prevent enforcement of an unconstitutional law. *See, e.g., Goldie’s Bookstore, Inc. v.*  
9 *Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) (“An alleged constitutional  
10 infringement will often alone constitute irreparable harm.”) (citing *Wright & Miller*, 11 Fed.  
11 *Prac. and P.* § 2948 at 440 (1973)). Plaintiffs have no remedy other than injunctive relief to  
12 prevent the State and its officers from implementing and enforcing SB 1783 in violation of the  
13 VPA.

14 Beyond that, if SB 1783 goes into effect, Arizona’s schools will lose millions of dollars  
15 in vital funding. Plaintiffs and other members of the community worked tirelessly to get Prop  
16 208 on the ballot and approved at the polls, and they fought hard to defend it from multiple  
17 attacks in court. They did so for a simple, yet crucial reason: our teachers and students deserve  
18 better. Without an injunction, SB 1783 will significantly harm Arizona’s schools, teachers, and  
19 students, as well as the voters who passed Prop 208.

20 **V. The Balance of Hardships and Public Interest Favor an Injunction.**

21 Lastly, the balance of hardships and public interest also weigh heavily in Plaintiffs’ favor.  
22 Arizona has a strong public policy favoring the People’s fundamental right to legislate by  
23 initiative. An injunction would safeguard that interest against unconstitutional interference by  
24 the Legislature and preserve the will of the People. On the other hand, there is no “hardship”  
25 associated with enjoining the State from implementing and enforcing an unconstitutional law.  
26 And because SB 1783’s income tax loophole violates the VPA, “public policy and the public

1 interest are served by enjoining [this] unlawful action.” *Arizona Pub. Integrity All. v. Fontes*, 250  
2 Ariz. 58 ¶ 27 (2020).

3 **Conclusion**

4 The People of Arizona have spoken, and they chose to require the wealthy to pay their  
5 fair share to fund our schools. The Legislature may be unhappy with that choice, but our  
6 constitution doesn’t allow them to undo it. For all the reasons above, the Court should grant a  
7 preliminary injunction enjoining SB 1783. Plaintiffs also request their attorneys’ fees and costs  
8 under the private attorney general doctrine and A.R.S. §§ 12-341 and 12-1840.

9 RESPECTFULLY SUBMITTED this 5th day of August, 2021.

10 **COPPERSMITH BROCKELMAN PLC**

11 By /s/ Roopali H. Desai

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