IN THE SUPREME COURT
OF THE STATE OF ARIZONA

ANDY BIGGS, et al., Petitioners, v. HON. KATHERINE COOPER, Respondent Judge, and JANICE K. BREWER, in her official capacity as Governor of Arizona; THOMAS J. BETLACH, in his official capacity as Director of the Arizona Health Care Cost Containment System, Real Parties in Interest.	No. CV-14-0132-PR Arizona Court of Appeals, Division One No. 1 CA-SA 14-0037 Superior Court of Maricopa County Case No. CV2013-011699

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF CROSS-PETITIONERS ANDY BIGGS, ET AL.

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INTEREST OF AMICUS CURIAE

Donor-supported Pacific Legal Foundation (PLF) is the oldest and largest public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. PLF is headquartered in Sacramento, California, and has offices in Washington, Florida, Hawaii, and Washington, D.C.

For more than 35 years, PLF has litigated directly, or as amicus curiae, in cases involving supermajority requirements for taxes, such as California's Proposition 13, *see, e.g.*, *Young v. Schmidt*, No. B230629, 2012 WL 3013900 (Cal. Ct. App. July 24, 2012); *Angle v. Legislature of the State of Nevada*, 274 F. Supp. 2d 1152 (D. Nev. 2003), *aff'd sub nom.*, 99 F. App'x 90 (9th Cir. 2004), *cert. denied*, 543 U.S. 1120 (2005); Nevada's Question 11, *see Guinn v. Legislature of the State of Nevada*, 71 P.3d 1269 (Nev. 2003); *Cal. Ass'n of Prof'l Scientists v. Dep't of Fish & Game*, 79 Cal. App. 4th 935 (2000); and Washington's Initiative 601. *See Walker v. Munro*, 879 P.2d 920 (Wash. 1994).

PLF has also participated in numerous cases across the country relating to standing doctrines. *See, e.g., Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005 (Cal. 2011); *Grayson v. AT & T Corp.*, 15 A.3d 219 (D.C. Cir. 2011); *DaimlerChrysler Corp. v.*

Cuno, 547 U.S. 332 (2006); *Walker*, 879 P.2d 920. And PLF attorneys have published leading scholarship on the doctrine of standing. *See* Timothy Sandefur, *State Standing to Challenge Ultra Vires Federal Action: The Health Care Cases and Beyond*, 23 U. Fla. J.L. & Pub. Pol'y 311 (2012); Joshua Paul Thompson & Damien M. Schiff, *California Standing Doctrine: The Enigma Explained* (Apr. 5, 2011), *available at* http://ssrn.com/abstract=1803552 or http://dx.doi.org/10.2139/ssrn.1803552 (last visited Sept. 23, 2014).

PLF has also appeared frequently in this Court as amicus curiae. *See, e.g.*, *Cain v. Horne*, 220 Ariz. 77, 202 P.3d 1178 (2009); *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 108 P.3d 917 (2005); *May v. McNally*, 203 Ariz. 425, 430, 55 P.3d 768, 773 (2002).

As a leading advocate of constitutional restraints on the tax power, and given its expertise on matters relating to standing, PLF believes its public policy experience will assist this Court in considering this case.

Counsel for Amicus has conferred with counsel for the Petitioners and for the Real Parties in Interest, and they have consented in writing to PLF's appearance in this matter.

INTRODUCTION

Article IX, Section 22, of the Arizona Constitution, like any supermajority voting requirement, is subject to criticism by legislative majorities. It will always be

in the majority's interest to argue that the supermajority requirement does not apply, and absent independent review by the courts, the majority will exploit its political power to escape the supermajority rule by claiming that it has the sole power to decide when it must comply with that constitutional requirement. But the Constitution is law and cannot be evaded so simply. The court below properly held that whether a bill comports with a constitutional supermajority requirement is not, and must not be, a political question. Instead, it is a matter of constitutional law that can be resolved by a court. Not only is that question analogous to several other politically controversial legal questions this Court and other state courts regularly consider, but to rule otherwise would empower the legislature to avoid a variety of important legal limits on its power.

The meaning and application of the constitutional supermajority requirement is not a political question; it is the law, and it is emphatically the judiciary's duty to explain and apply the law. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). To hold otherwise would contravene the purpose of the separation of powers doctrine by rendering courts essentially subservient to the legislature, and would endanger individual liberty. *See J.W. Hancock Enterprises, Inc. v. Arizona State Registrar of Contractors*, 142 Ariz. 400, 404, 690 P.2d 119, 123 (Ct. App. 1984) ("[T]here is no liberty, if the power of judging be not separated from the legislative and executive powers.") (citation omitted).

The appellate court also rightly held that legislators have standing to sue. When a simple majority passes a bill without obtaining the required supermajority vote, it nullifies the votes of those legislators who could have defeated the bill if the supermajority obligation had been adhered to. Here, the Respondent-Legislators' votes were "virtually held for naught," because "their votes would have been sufficient to defeat" the Medicaid tax. *See Coleman v. Miller*, 307 U.S. 433, 438 (1939). The very purpose of a supermajority requirement is to increase the relative voting power of the minority legislators. For the majority to deprive them of that power and eliminate their special role in the enactment of tax bills by mere fiat—by simply declaring that a bill is not subject to the supermajority requirement—injures these legislators in a "distinct and palpable" way. *Sears v. Hull*, 192 Ariz. 65, 69, 961 P.2d 1013, 1017 (1998). Those legislators' personal interest in ensuring the efficacy of their vote gives them standing to challenge the unconstitutional enactment of the tax. *Dobson v. State ex rel., Comm'n on Appellate Court Appointments*, 233 Ariz. 119, 122, 309 P.3d 1289, 1292 (2013). Legislators who fall within the group whose voting power is diluted by the majority's violation of the supermajority requirement are in the best position to seek judicial enforcement of that requirement. Their interest is sufficiently adverse to the legislative majority as to ensure the full sharpening of all legal issues presented here. *Cf. Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz. App. 600, 607, 557 P.2d 532, 539 (Ct. App. 1976). And the legislative

majority cannot be relied upon to ensure enforcement of the supermajority requirement. *Goldwater v. Carter*, 617 F.2d 697, 703 (D.C. Cir.), *vacated*, 444 U.S. 996 (1979). No other factor supports denying the plaintiffs in this case standing or withholding judicial review of the ultimate question.

Courts must police supermajority requirements closely, both because simple majorities have an incentive to evade them, and because such requirements serve important democratic values. They reduce the potential for special interest legislation, protect the politically powerless, foster civility, and improve the quality of legislation. For these reasons, this Court should affirm the decision below.

I

WHETHER A LAW COMPORTS WITH A SUPERMAJORITY REQUIREMENT IS NOT A POLITICAL QUESTION

Judicial review is necessary to ensure that legislators abide by constitutional limits. As James Madison wrote: "The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." *The Federalist* No. 48, at 306 (James Madison) (Clinton Rossiter ed., 1961). Among the most important devices for curbing that tendency are written constitutional limits enforced by an independent judiciary "whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the

reservations of particular rights or privileges would amount to nothing." *Id.* No. 78 at 465 (Alexander Hamilton).

Petitioners argued below that judicial review is inappropriate here because whether a bill is subject to Article IX, Section 22, is a political question outside the Court's purview. *Biggs v. Brewer*, No. 14-0037, slip op. at 6 (Ariz. Ct. App. Apr. 22, 2014). This cannot be correct. As cases from both Arizona and other states show, not only is this case an archetypical constitutional controversy that is appropriate for judicial resolution, but to hold otherwise would put the proverbial fox in charge of the henhouse, and allow the legislature to evade all sorts of limits on legislative power.

Judicial review is the corollary of separation of powers—and it protects individual liberty by ensuring that legislators are not the sole judges of their constitutional authority. While the political question doctrine acts as a limit on judicial review, that doctrine does not insulate a question from judicial determination simply because it "involves a disagreement between the political branches," *Brewer v. Burns*, 222 Ariz. 234, 238, 213 P.3d 671, 675 (2009), or has political overtones. *Cf. INS v. Chadha*, 462 U.S. 919, 942 (1983). A legal controversy is presented when a party alleges that the Legislature has stepped beyond its constitutional boundaries or acted contrary to the law. A political question, by contrast, arises when the case "involve[s] decisions that the constitution commits to one of the political branches of government and raise[s] issues not susceptible to judicial resolution according to

discoverable and manageable standards." *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485, 143 P.3d 1023, 1026 (2006).

There is no political question here. The Constitution does not commit to the political branches the decision of whether the supermajority requirement applies. That would render the supermajority requirement essentially discretionary, allowing the Legislature to decide when to obey it and when not to. Nor is there any doubt as to discoverable and manageable standards—the rule simply requires that all tax bills receive a two-thirds vote in the Legislature. Arizona courts routinely hear cases of the same nature. For example, this Court held it appropriate to decide whether the Legislature properly presented a bill to the Governor, because the case did not require the Court to make the particular policy determination of "whether the Legislature should include particular items in a budget or enact particular legislation." *Burns*, 222 Ariz. at 239, 213 P.3d at 676. Instead, the Court was only asked to determine whether the Legislature abided by the Constitution's requirements in passing that legislation. *Id.* The Court also held it appropriate to determine whether the Governor properly exercised her removal and veto powers—again noting that "[a] governor's decision *whether* to exercise a veto" is different from deciding "whether the constitution permitted the Governor to exercise her veto power." *Forty-Seventh Legislature*, 213 Ariz. at 485, 143 P.3d at 1026. While the former required making policy

decisions, the latter required interpreting the constitution, for which the courts "bear ultimate responsibility." *Id.* Such is the case here.

This question before the Court is not a matter of policy, but a question of constitutional law. The Court is not asked to determine whether the Medicaid expansion is a good or bad idea, or even whether supermajority requirements are good or bad ideas. The Court is only asked whether the Legislature acted within constitution limits when it passed that law. While the former questions require policy determinations that are entrusted to the Legislature, the latter falls within the scope of constitutional questions which this Court ordinarily rules upon.

There are obviously "discoverable and manageable standards" that courts can apply in a case like this. Whether an act "provides for a net increase in state revenues" is an empirical fact that can be determined by courts presented with evidence. Several out-of-state courts have agreed that it is appropriate for the judiciary to determine whether laws are subject to supermajority requirements. *See*, *e.g.*, *Donovan v. City of Long Beach*, 104 So. 3d 166, 170 (Miss. Ct. App. 2012) (whether supermajority vote was triggered by landholder's complaint); *Cal. Farm Bureau Fed'n v. State Water Res. Control Bd.*, 247 P.3d 112 (Cal. 2011) (whether fees on water rights was invalid ad valorem tax); *Eadie v. Town Bd. of the Town of N. Greenbush*, 22 A.D.3d 1025, 1028 (N.Y. App. Div. 2005), *aff'd*, 854 N.E.2d 464 (N.Y. 2006) (whether homeowners outside of buffer zone were "immediately adjacent" to the land such that

their protest required supermajority vote on zoning change); *Drury v. City of Cape Girardeau*, 66 S.W.3d 733, 740 (Mo. 2002) (whether city contract with University creates "indebtedness" subject to supermajority vote); *Rider v. Cnty. of San Diego*, 1 Cal. 4th 1, 5, 820 P.2d 1000 (Cal. 1991) (whether sales tax was "special tax[]" subject to supermajority requirement); *Los Angeles Cnty. Transp. Comm'n v. Richmond*, 31 Cal. 3d 197, 203, 643 P.2d 941 (Cal. 1982) (whether County Transportation Commission was a "special district" subject to supermajority requirement for tax legislation). As these cases show, whether a law is subject to a supermajority requirement is not the type of policy question that the Court should reserve to the Legislature.

Supermajority requirements actually foster the separation of powers, as compared to other restrictions on legislative powers. John O. McGinnis & Michael B. Rappaport, *Supermajority Rules as a Constitutional Solution*, 40 Wm. & Mary L. Rev. 365, 442 (1999). Under supermajority requirements, courts are only required to answer whether legislation is in fact spending legislation, or whether it does in fact increase the budget—or meets whatever criteria is required for supermajority vote—as opposed to inquiring into policy rationales, or deciding whether the Legislature's behavior was reasonable or proper. Supermajority requirements are also more flexible than all-out bans on particular types of spending, or spending over a certain amount. Thus supermajority requirements limit legislative action and allow legislatures

flexibility. They also limit the role of the courts in the political process, while at the same time requiring that courts vigilantly enforce them, as they enforce other constitutional limits on the Legislature.

II

THE LEGISLATORS HAVE STANDING TO CHALLENGE THE MEDICAID EXPANSION

When a simple majority subverts a supermajority requirement, it nullifies the votes of those legislators who could have defeated the bill if the requirement had been adhered to—indeed, whose votes are given extra weight specifically to enable them to do so. The very purpose of a supermajority requirement is to enable the legislative minority to block legislation that would have passed under a simple majority requirement, whenever the people believe that legislation of that kind is too important to be entrusted to a simple majority. Article IX, Section 22, was enacted for the express purpose of giving the minority of legislators a more effective role in the lawmaking process. Thus, where supermajority requirements are flouted, the legislators who would have prevailed under a supermajority requirement suffer a concrete, particularized injury sufficient to confer standing. *Cf. Sierra Club v. Morton*, 405 U.S. 727, 740 (1972) (Standing serves as "a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct

stake in the outcome."). The legislators themselves are the best party to bring a lawsuit to vindicate this injury.

Petitioners concede that legislators have standing to *challenge* supermajority requirements because those requirements "change[] the efficacy of their individual vote[s]." Pet. For Review at 7. But the same must be true in a case in which the Legislature *violates* a supermajority requirement; ignoring a supermajority rule makes the votes of those who would have succeeded in defeating legislation under a supermajority requirement ineffective. There is no meaningful distinction between the two. In both cases, the legislators are deprived of the efficacy of their votes. That is a unique injury sufficient for purposes of standing under both federal law, *Raines v. Byrd*, 521 U.S. 811, 823 (1997), and the less demanding Arizona standard. *Dobson*, 233 Ariz. at 122, 309 P.3d at 1292.

Petitioners argue that the legislators have brought the present lawsuit solely because they lost. But this is disingenuous. In fact, the legislator plaintiffs *won*, or would have won, had their votes been counted under the constitutionally mandated rules. Had they actually lost in terms of votes counted, they would indeed lack standing—but then, there would have been no need for the majority to ignore the voting rules imposed by Article IX, Section 22. This is simply not a case where politicians are seeking to rehash a "lost . . . political battle" because "legislation was validly enacted over their opposition." *Silver v. Pataki*, 755 N.E.2d 842, 848 (N.Y.

2001). Instead, the legislators here have alleged a procedural defect in the political process which led to a bill being signed into law *in violation of the constitution*. The legislators do not merely complain that they were outvoted, but that the laws governing the vote were broken. They have standing to bring that complaint. *Urban Justice Center v. Pataki*, 10 Misc. 3d 939, 947 (N.Y. Sup. Ct. 2005), *aff'd*, 828 N.Y.S.2d 12 (N.Y. App. Div. 2006) (Legislators had standing where they "complain[ed] that their legislative powers have been severely diminished by an *improper* exercise of power on the part of defendants.") (emphasis added); *Morgan v. Daxon*, 49 P.3d 687 (Okla. 2001) (legislators have standing to challenge statute that violates anti-logrolling law); *cf. Killeen v. Wayne Cnty. Rd. Comm'n*, 357 N.W.2d 851, 855 (Mich. Ct. App. 1984) ("a legislator [may sue when he] alleges that his vote has been nullified . . . or his influence as a legislator diminished . . . . [Only when the] 'votes which [lawmakers] are entitled to make have been cast *and duly counted*, [does] their interest as legislators cease[]'" (emphasis added, citations omitted)).

As the Pennsylvania Supreme Court has explained, legislators have standing "in cases [to] assert[] claims that their unique legislative powers [have] been infringed," such as "where an individual legislator alleged a deprivation of his right to vote to override a veto, [or] where state senators . . . challenged an illegal tie-breaking vote cast by a lieutenant governor," but not when their "votes [have] been duly counted but . . . the effectiveness of the legislation had been impaired by some subsequent

event." *Fumo v. City of Philadelphia*, 972 A.2d 487, 497 (Pa. 2009). This case falls plainly within the former category. The legislators assert not that the Governor is enforcing the Medicaid expansion tax badly, but rather that they have been deprived of their unique legislative powers by the majority's refusal to abide by the supermajority rule. This Court is being asked to act as a referee, not as a policy-maker—to enforce pre-existing rules that bind the Legislature, not to write new rules to decide policy.

It is all the more important that the Court recognize legislative standing given that Article IX, Section 22, is especially vulnerable to being violated by legislative majorities who have little incentive to comply with the supermajority rule, and who can always use a specious claim to democratic legitimacy as an excuse for violating it.[1] And when it is violated, there will often be few who both have standing and are willing to seek judicial redress—either because they are direct beneficiaries of the violation (as the hospitals are in this case), or because the costs of the violation are dispersed among so many individuals that taxpayers do not acutely feel them. Thus, not only are legislators the proper parties to bring suit when supermajority requirements are ignored—they are likely one of the few groups who have incentive

[1] *See* Brief Amicus Curiae of Pacific Legal Foundation in Support of Cross-Petitioners Andy Biggs, et al., at 5-9.

to do so. *Cf. Goldwater*, 617 F.2d at 703 (legislative majority is unlikely to seek or permit redress for violations of the supermajority requirement).

Finally, the members of the legislative minority who suffer the deprivation of their voting power through the violation of a supermajority rule are in the best position to raise a legal challenge. They are present at the violation, and know the relevant facts; their position is plainly adverse to that of the majority, so that "vigorous argument will sharpen the issues," *Jacobs v. New York*, 388 U.S. 431, 436 (1967); and their position as representatives of constituents who have given them a power to block legislation that the bare majority approves of makes them trustees of a special sort. That rule gives them more than an ordinary legislative vote; they are given a unique power to block legislation the majority would approve. That is a discrete interest conveyed upon them and nobody else. When that discrete interest is violated by a majority that has no institutional incentive to preserve that interest, the legislators who are so deprived have suffered a "distinct and palpable injury" which is not shared by the general public. *Sears*, 192 Ariz. at 69, 961 P.2d at 1017; *cf. Gutierrez v. Pangelinan*, 276 F.3d 539, 542-46 (9th Cir. 2002) (Governor had standing to challenge legislative action that "nullifi[ed]" his "asserted prerogative" to allow bills to become law without his signature). The *only* avenue for redress is before the courts.

III

SUPERMAJORITY REQUIREMENTS SHOULD BE POLICED CLOSELY BY COURTS

Requiring that the judiciary, and not the Legislature, decide whether a law is subject to constitutional limits has special importance in the case of supermajority requirements—as heightened voting requirements bolster democratic values. They reduce the opportunity for special interest legislation, protect the rights of the politically powerless, cultivate a better political culture, and improve the quality of the resulting laws.

Supermajority requirements bolster democratic values. First, it combats the problem of special interest legislation aimed at benefitting a discrete group at the expense of the public at large. John O. McGinnis & Michael B. Rappaport, *Our Supermajoritarian Constitution*, 80 Tex. L. Rev. 703, 734 (2002). Not only does special interest legislation crowd out spending on truly public goods, it is inefficient, and has a measurable harm on political culture. McGinnis & Rappaport, *Supermajority Rules*, *supra*, at 367. By requiring broader consensus, supermajority requirements make it more difficult to pass targeted legislation and reduce the incentive for special interest groups to lobby.

Notably, special interest legislation is often a one-way ratchet that increases taxing and spending, but barely decreases them. *Id.* at 382. Because increased

revenue that can be used on spending provides concentrated benefits to a few recipients, while the burdens of increased taxes are broadly dispersed among the public at large, special interest groups will usually spend their resources vying for revenue increases and higher spending—which they do not have to share in the same proportion as the general public. This reinforces the importance of legislative standing in this case. When supermajority votes are ignored, there will be few who are willing to challenge the resulting law. By definition, the majority supports laws passed in violation of the supermajority requirement. *Goldwater*, 617 F.2d at 703. The beneficiaries of government spending (the hospitals in this case) will also support it. And the costs are dispersed among so many individual taxpayers and citizens that they may not be felt acutely enough to incentivize any one person to bring a lawsuit.

Supermajority requirements also protect the rights of the politically powerless, who have fewer resources and encounter greater difficulty organizing. Special interest legislation will often override the interests of these many disparate and unorganized groups in favor of the interests of the organized few. Supermajority requirements make it more difficult for well-organized majorities to trample on the rights of the politically powerless by raising the barrier for all legislation. McGinnis & Rappaport, *Supermajority Rules*, *supra*, at 404.

A political system that is skewed toward special treatment and large scale transfers of money to politically powerful groups "pits citizens against one another

and saps public spiritedness." *Id.* at 369. Not only will legislation under supermajority rule likely benefit the public more broadly, but it will be more thoughtful and of better quality overall, as "it is normally assumed that the more votes a piece of legislation receives, the better the legislation." *Id.* at 416. By slowing down the legislative process and requiring a broader consensus, supermajority rules encourage more serious and prolonged debate. Brett W. King, *The Use of Supermajority Provisions in the Constitution: The Framers, The Federalist Papers and the Reinforcement of a Fundamental Principle*, 8 Seton Hall Const. L.J. 363, 404 (1998). By the same token, supermajority requirements help prevent hasty political decisions that impose long-term losses for short term gains. This can be especially problematic when those measures are difficult to reverse, because they become entrenched or otherwise difficult to repeal. McGinnis & Rappaport, *Our Supermajoritarian Constitution*, *supra*, at 740. It was for this reason that the authors of the Federal Constitution imposed a variety of supermajority requirements on matters they considered of special importance—including the ratification of the Constitution itself. And it is why the voters who adopted Arizona's supermajority requirement did so knowing that the requirement would "make it more difficult to raise taxes" even when "respond[ing] to emergency situations," or to "a crisis . . .

[such as] a great need for the poor." Publicity Pamphlet for Nov. 3, 1992, General Election at 46, 49.[2]

The legislative majority will typically claim that a violation of the supermajority requirement is justified by public needs, and will claim democratic legitimacy for its actions—because, after all, it is the majority. But such arguments are specious and dangerous. Supermajority requirements, particularly those adopted by ballot initiative, actually serve democratic values while being counter-majoritarian. As amicus noted in its brief in support of the cross-petition, the infamous Nevada case of *Guinn*, 71 P.3d 1269, stands as a sad example. There, the state supreme court instructed the Legislature to disregard the state constitution's two-thirds rule on the theory that it was being "used by a few to challenge the majority's budget decisions," *Guinn v. Legislature of the State of Nevada*, 76 P.3d 22, 31 (Nev. 2003) (*Guinn II*), and was harming "the democratic process." *Id.* at 32. That decision was quickly recognized as a betrayal of constitutional principle for the purposes of political expediency. Troy L. Atkinson, *The Future of Guinn v. Legislature*, 4 Nev. L.J. 566, 570 (2004); Eugene Volokh, *Nevada Supreme Court Orders Violation of Nevada Constitution*, The Volokh Conspiracy (July 10, 2003, 6:41 PM)[3] ("one of the most

[2] *Available at* https://www.azsos.gov/election/1992/Info/PubPamphlet/PubPam92.pdf (last visited Sept. 23, 2014).

[3] *Available at* http://www.volokh.com/2003_07_06_volokh_archive.html#10578876 9924713715 (last visited Sept. 23, 2014).

appalling judicial decisions I've ever seen"). Indeed, that decision "jeopardize[d] the integrity of procedures that are central to the separation of powers in a free republic." *Nevada Supreme Court Sets Aside a Constitutional Amendment Requiring a Two-Thirds Majority for Passing a Tax Increase Because It Conflicts with a Substantive Constitutional Right*, 117 Harv. L. Rev. 972, 975 (2004). The state's Chief Justice, who authored the opinion, was forced to resign shortly afterwards in response to public outcry over the decision, Amanda Frost & Stefanie A. Lindquist, *Countering the Majoritarian Difficulty*, 96 Va. L. Rev. 719, 736 (2010), and within a few years, the court quietly admitted its mistake. *Nevadans for Nevada v. Beers*, 142 P.3d 339, 348 (Nev. 2006).

The Nevada court discovered that ignoring the supermajority requirement in the name of "preserving the democratic process," *Guinn II*, 76 P.3d at 32, in fact violated that process and betrayed the most essential democratic value of all: enforcing the Constitution as written. *Windes v. Frohmiller*, 38 Ariz. 557, 561-62, 3 P.2d 275, 277 (1931) ("The sovereign people speak in the language of their Constitution. Their will . . . is the will of the sovereign itself. The Legislature may speak but only within the limitations of the fundamental law.'" (quoting *State v. Osborne*, 14 Ariz. 185, 191, 125 P. 884, 887 (Ariz. 1912)).

In sum, supermajority requirements both improve the quality of legislation, and serve democratic values. Courts must police these requirements closely to ensure that they are not undermined by the Legislature that is subject to them.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

DATED: September 25, 2014.

Respectfully submitted,

By /s/ James S. Burling
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CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rule of Civil Appellate Procedure 14, I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF CROSS-PETITIONERS ANDY BIGGS, ET AL., uses proportionately spaced type of 14 points or more, is double-spaced using a roman font, and contains 4,533 words.

DATED: September 25, 2014.

/s/ James S. Burling
JAMES S. BURLING

DECLARATION OF SERVICE

I, James S. Burling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 25th day of September, 2014, at Sacramento, California.

/s/ James S. Burling
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