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17 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 LIVING UNITED FOR CHANGE IN
20 ARIZONA, *et al.*,

21 Plaintiffs,

22 v.

23 ADRIAN FONTES, in his official capacity as
24 the Secretary of State, *et al.*,

25 Defendants,

26 and

27 BEN TOMA, in his official capacity as
28 Speaker of the Arizona House of
Representatives *et al.*,

Intervenor-Defendants.

PODER IN ACTION, INC., *et al.*,

Plaintiffs,

v.

STATE OF ARIZONA, *et al.*,

Defendants,

and

BEN TOMA, in his official capacity as
Speaker of the Arizona House of
Representatives, *et al.*,

Intervenor-Defendants.

No. CV2024-014129
No. CV2024-014340
(Consolidated)

**INTERVENOR-DEFENDANTS’
RESPONSE TO PLAINTIFFS’
MOTIONS FOR PRELIMINARY
INJUNCTION**

(Before the Hon. Scott Minder)

ORAL ARGUMENT REQUESTED

1 **INTRODUCTION**

2 Intervenor-Defendants Speaker of the Arizona House of Representatives Ben Toma
3 and President of the Arizona State Senate Warren Petersen hereby oppose Plaintiffs’
4 Motions for Preliminary Injunctions, which challenge House Concurrent Resolution
5 (“HCR”) 2060, the Secure the Border Act (“Act”), on the ground that it violates the single-
6 subject rule. *See* Ariz. Const. art. 4, pt. 2, § 13; *Hoffman v. Reagan*, 245 Ariz. 313, 316
7 ¶11 (2018).

8 Plaintiffs’ claim fails because HCR 2060’s provisions “are reasonably related to
9 one general subject”: responding to harms related to an unsecure southern border. *See*,
10 *e.g.*, *Hoffman*, 245 Ariz. at 317 ¶18. HCR 2060’s provisions address problems associated
11 with illegal immigration and illegal drug smuggling at the southern border. The
12 Legislature found that these activities are directly exacerbating the border crisis and
13 harming the State. In fact, the Legislature went above and beyond its legal duty by
14 specifying its findings at the beginning of HCR 2060, thus showing how the provisions
15 relate to the Act’s subject and purpose.

16 HCR 2060 bears no resemblance to the two acts that Arizona courts have found
17 violate the single subject rule. Plaintiffs admit as much by asking this Court to 1) review
18 the contents of other legislative acts or statements that are not part of HCR 2060 or 2)
19 apply different legal tests that are simply inapposite here. These arguments are improper.
20 Arizona courts have been clear that their role is limited to ascertaining whether the
21 provisions of an act reasonably relate to one general subject or idea. Because HCR 2060
22 meets that standard, it must be presented to the voters. *Hoffman*, 245 Ariz. at 316-17 ¶17
23 (“If a ballot measure meets the statutory and constitutional requirements to appear on the
24 ballot, its wisdom as a policy matter is for the voters to decide.”).

25 For all these reasons, the Legislature has stayed well within the requirements of the
26 single subject rule when enacting HCR 2060, and the Court should deny both motions and
27 enter judgment for Defendants.
28

1 **FACTUAL AND PROCEDURAL BACKGROUND**

2 The Legislature has the power to order the submission of any measure it enacts to
3 the people through a referendum. Ariz. Const. art. IV, pt. 1, § 1(3). When any such
4 measure is filed with the Secretary of State, he or she shall cause it to be printed on the
5 official ballot at the next regular election, which is November 5, 2024. *Id.* art. IV, pt. 1,
6 § 1(10); *id.* art. VII, § 11.

7 On June 4, 2024, the Legislature filed HCR 2060 with the secretary. *See* HCR 2060
8 at 8.¹ The short title of the act is the “Secure the Border Act.” *Id.* at 1. HCR 2060 contains
9 express legislative findings and a declaration of the Act’s purpose. *Id.* at 1-2. This includes
10 that “a public safety crisis is occurring in Arizona, caused by transnational cartels
11 engaging in rampant human trafficking and drug smuggling across the state’s southern
12 border.” *Id.* at 1. With respect to the role of fentanyl in this crisis, the Legislature found
13 that “[t]ransnational cartels fund their operations by trafficking this deadly drug across the
14 southwest border” and that “illicit fentanyl is primarily responsible for an increasing
15 number of overdose deaths in Arizona.” *Id.* at 2. With respect to the role of economic
16 incentives for illegal immigration, the Legislature found that “[m]any individuals who
17 enter ... unlawfully are enticed by smugglers with promises of economic incentives,
18 including employment and taxpayer-funded benefits.” *Id.*

19 Based on those findings, the purpose of the act is to 1) “Empower[] law
20 enforcement to protect the public by arresting aliens who fail to enter Arizona’s southern
21 border through official ports of entry”; 2) “Reduc[e] the incentive for illegal immigration
22 by creating criminal offenses for a person to knowingly present false documents to obtain
23 public benefits or evade workplace eligibility detection”; 3) “Strengthen[] Arizona’s laws
24 that require documentation ... to receive public benefits”; and 4) “Increas[e] punishments
25 for criminals who fuel the crisis at the southern border by selling fentanyl that causes the
26 death of another person.” *Id.* at 2-3.

27 _____
28 ¹ Pin citations are to the internal page numbers of the PDF version of the act, which is
available at <https://www.azleg.gov/legtext/56leg/2R/laws/hcr2060.pdf>.

1 Both Plaintiff groups filed a complaint for declaratory and injunctive relief,
2 challenging HCR 2060’s legal sufficiency solely on noncompliance with the single-
3 subject rule. *See* Complaint, *Living United for Change in Ariz. v. Fontes*, No. CV2024-
4 01419 (Maricopa Co. Superior Ct., filed June 5, 2024); Complaint *Poder in Action, Inc.*,
5 No. CV2024-014340 (Maricopa Co. Superior Ct., filed June 6, 2024).

6 They also moved for preliminary relief. The *Poder* Plaintiffs filed their Motion for
7 Preliminary Injunction (the “*Poder Moton*”) on June 11, 2024. The *Lucha* Plaintiffs filed
8 their Motion for Preliminary Injunction (the “*Lucha Motion*”) on June 17, 2024. The *Poder*
9 Motion and *Lucha* Motion are collectively referred to herein as “the Motions.”

10 The President and Speaker have intervened as of right pursuant to A.R.S. § 19-
11 161(D), and they are filing this brief to oppose the Motions and request the Court enter
12 judgment for defendants. On June 12, 2024, the parties stipulated to consolidating the
13 hearing on the Motions with trial on the merits, which will consist only of legal argument.
14 Under A.R.S. § 19-161(B), this action “shall be advanced on the calendar and heard and
15 decided by the court as soon as possible.”

16 ARGUMENT

17 **I. Plaintiffs’ Single-Subject Claim Against HCR 2060 Fails on the Merits**

18 **A. A Bill Whose Provisions Reasonably Relate to One General Subject** 19 **Satisfies The Single-Subject Rule**

20 Article IV, part 2, Section 13 provides that “[e]very act shall embrace but one
21 subject and matters properly connected therewith.” To satisfy this single subject rule, an
22 act’s provisions need only “embrace some one general subject,” meaning they “fall
23 under some one general idea.” *Hoffman*, 245 Ariz. at 316 ¶14 (quoting *Litchfield*
24 *Elementary Sch. Dist. No. 79 v. Babbitt*, 125 Ariz. 215, 224 (1980)); accord *Arizona Sch.*
25 *Boards Ass’n, Inc. v. State*, 252 Ariz. 219, 227 ¶¶33-34 (2022) (“*ASBA*”).

26 “Subject . . . is to be given a broad and extended meaning, so as to allow the
27 legislature full scope to include in one act all matters having a logical or natural
28 connection.” *Litchfield*, 125 Ariz. at 224. The *ASBA* court further recognized that

1 “[e]nacting wide varieties of legislation may be essential to achieving one purpose,” and
2 with a “common tie between [a] diverse category of topics,” such legislation may satisfy
3 the single subject rule. 252 Ariz. at 228 ¶36.

4 In contrast, to fail the rule, an act must “include[] ‘dissimilar and discordant
5 subjects that by no fair intendment can be considered as having any legitimate connection
6 with or relation to each other.’” *Id.* at 227 ¶34 (citing *Litchfield*, 125 Ariz. at 224). This
7 negative phrasing of the single subject rule is particularly instructive because it makes
8 clear the subjects must 1) be “discordant and dissimilar” and 2) “by no fair intendment”
9 able to be considered to have “any legitimate connection with or relation to each other.”

10 The above test “heed[s] our constitution’s fundamental premise that the division of
11 powers necessarily impels judicial restraint, particularly in the realm of lawmaking.” *See*
12 *Dove Mountain Hotelco, LLC v. Ariz. Dep’t of Rev.*, No. CV-23-0176-PR, 2024 WL
13 2873355, at *6 ¶32 (Ariz. June 7, 2024) (quoting *ASBA*, 252 Ariz. at 229 ¶45).

14 **B. HCR 2060’s Provisions Relate to a One General Subject—Responding**
15 **to Harms Relating to Arizona’s Unsecured Southern Border**

16 HCR 2060 satisfies the single-subject rule because its provisions relate to one
17 general subject—harms stemming from an unsecure southern border—and this relation
18 provides a common tie “logically or in popular understanding,” which satisfies the single
19 subject rule. *See ASBA*, 252 Ariz at 227 ¶34.

20 HCR 2060 contains four main sets of provisions, which are contained in sections 3-
21 6 of the Act, to carry out its purpose of reducing such harms to the State and its residents.
22 These provisions relate to documentation for public benefits; knowingly selling fentanyl
23 that causes the death of another person; illegal entry into the state; and the E-Verify system
24 for employment eligibility. As noted above, the legislative findings in HCR 2060
25 themselves answer the question of how these provisions relate to one general subject or
26 purpose: illegal importation of fentanyl is financing the cartels who are destroying security
27 at the state’s southern border. *See* page 3, *supra*. And it is noteworthy that the new crime
28

1 has an affirmative defense that the fentanyl and its predecessor chemicals were either
2 manufactured or lawfully imported into the United States. HCR 2060 at p. 4 (adding A.R.S.
3 § 13-3424(B)). Similarly, incentives such as work and public benefits are also fueling the
4 crisis at the border. The Legislature designed HCR 2060 as a “holistic approach”, *see* HCR
5 2060 at 3, to address the public safety crisis at this state’s southern border by raising the
6 costs and reducing the incentives for such illegal activity that has undermined border
7 security. *See* page 3, *supra*. The general purpose of HCR 2060 is thus to reduce such illegal
8 activity and thereby make the border more secure.

9 Plaintiffs’ contrary arguments are unpersuasive. The Motions are strikingly silent on
10 addressing the very subject offered by the Legislature in its express findings: responding to
11 harms related to an unsecure southern border. This is fatal because the provisions of an act
12 need only reasonably relate to “one general subject,” *see, e.g., Hoffman*, 245 Ariz. at 317
13 ¶18, and Plaintiffs have failed to prove they do not relate to that subject.

14 Instead, the *Poder* Motion advances (at 1, 4, 15-16) the argument that HCR 2060 has
15 two discordant purposes: 1) laws relating to individuals’ unlawful entry and presence in the
16 United States, and 2) a new drug crime involving the sale of fentanyl. The *Lucha* Motion
17 advances (at 12) the similar argument that the crime related to sale of lethal fentanyl applies
18 regardless of whether the person is a citizen or someone entering unlawfully and therefore
19 it is a different subject than the rest of the bill. The *Lucha* Motion advances an additional
20 argument (at 12-13) that even as to the other provisions of HCR 2060, the documentation
21 requirements for work and public benefits are not necessarily based on whether a person
22 lawfully arrived or overstayed their visa.

23 The Motions thus seems to argue that the single subject rule requires that different
24 provisions must have overlapping elements or must necessarily be committed by the same
25 individuals. *See, e.g., Poder* Motion at 15-16 (“[P]rescribing a new crime for every adult
26 for the ‘sale of lethal fentanyl’ has nothing to do with an individual’s immigration status,
27 and thus is not ‘connected with or related to . . . either logically or in popular understanding’
28 HCR 2060’s remaining provisions.”).

1 These arguments fail under established case law. In *Sample v. Sample*, the court held
2 that House Bill 2238 did not violate the single subject rule, even though it related, among
3 other things, to 1) “domestic violence”; 2) “dissolution of marriage”; 3) “quasi-community
4 property law”; and 4) “support for a mentally or physically disabled child past the age of
5 majority.” 135 Ariz. 599, 603 (1983). Certain of these things require parties to be married
6 (e.g., “dissolution of marriage”), while others do not (e.g., “support for a mentally or
7 physically disabled child” or “domestic violence”). Under *Sample*, the law does not require
8 the type of overlap or identity of elements that Plaintiffs argue for here, and instead the
9 provisions “need only be reasonably related” to a “general subject matter [such as] domestic
10 relations.” *Hoffman*, 245 Ariz. at 316 ¶16 (citing *Sample*, 135 Ariz. at 603). Plaintiffs’
11 argument is fundamentally incompatible with *Hoffman* and *Sample*.

12 **C. Plaintiffs’ Other Arguments Are Unpersuasive**

13 **1. HCR 2060 Is Easily Distinguishable from the Two Arizona Cases** 14 **Holding an Act Violated the Single-Subject Rule**

15 Only two Arizona court opinions have struck down a legislative act as violating the
16 single subject rule over the State’s 112-year history. Those two data points show how
17 discordant a bill’s provisions must be to violate the rule. Because its sections all reasonably
18 relate to responding to harms related to an unsecure southern border, HCR 2060 is easily
19 distinguishable from these two cases.

20 In *ASBA*, the Arizona Supreme Court struck down Senate Bill (“SB”) 1819, which
21 was part of the 2022 budget. 252 Ariz. at 228 ¶36. SB 1819 had fifty-two sections that
22 spanned approximately thirty distinct subjects. *Id.* ¶35-¶36. These included “matters
23 ranging from dog racing, the lottery, voter registration, election integrity, the Governor’s
24 emergency powers, the Board of Trustees’ duties and powers, the definition of
25 ‘newspaper,’ political contributions, management of the state capital museum, and
26 COVID-19.” *Id.* To strike down the law, however, the Court went even further than just
27 noting the disparate subjects addressed and concluded that these subjects were not related
28 to a single purpose and had no common tie. *Id.* The Court ultimately concluded that SB

1 1819 “contain[ed] an array of discordant subjects that are not reasonably connected to one
2 general idea” and were not connected “to budget procedures.” *Id.*

3 The only other Arizona opinion invalidating an act on single subject grounds was
4 issued forty-two years ago in *Litchfield*. 125 Ariz. at 223-26. The Court of Appeals applied
5 the provision in article 4, part 2, § 20 that “[a]ll other appropriations shall be made by
6 separate bills, each embracing but one subject” and said:

7 Chapter 163 is a miscellany, rather than a cohesive and coordinated set of
8 appropriation measures. We cannot perceive any realistic commonality
9 between executive aircraft for the Department of Public Safety, a mobile
10 dental clinic to be operated by the Dental Health Bureau, an apparently
11 operational grant to the Board of Dental Examiners, an historical data based
12 cross-reference index for the Incorporating Division of the Corporation
13 Commission, and a capital appropriation to the Department of Corrections
14 for a variety of purposes, including architectural fees for a new prison. ...
15 For the[se] reasons chapter 163 is in violation of the second sentence of
16 article 4, part 2, section 20.

17 *Litchfield*. 125 Ariz. at 225.

18 HCR 2060 stands in stark contrast to the acts struck down in these two cases. It is
19 not a “miscellany,” *id.*, and it does not contain “an array of discordant subjects,” *ASBA*,
20 252 Ariz. at 228 ¶36.

21 **2. The Contents of Prior Bills And Legislators’ Statements Are 22 Irrelevant to the Sole Question in this Case**

23 The argument that HCR 2060 violates the single subject rule because it contains
24 provisions previously included in different bills is nothing more than a red herring. The
25 *Poder* Motion (at 2, 4-5) discusses four vetoed bills that contain provisions that are similar
26 to those now included in HCR 2060. Similarly, the *Lucha* Motion (at 4, 13) cites comments
27 by supporters of HCR 2060 regarding the fact that HCR 2060 contains provisions in bills
28 vetoed by the Governor.

As a preliminary matter, this Court should not consider individual legislators’
statements to resolve Plaintiffs’ single-subject challenge, or to ascertain the purpose or

1 intent underlying HCR 2060 in resolving Plaintiffs’ claims. *See State of Arizona v. State*
2 *of California*, 283 U.S. 423 n.7 (1931) (“no inquiry may be made concerning the motives
3 or wisdom of a state Legislature acting within its proper powers”) (citing cases); *United*
4 *States v. O’Brien*, 391 U.S. 367, 383 (1968) (explaining inquiries into legislative motives
5 “are a hazardous matter” because “[w]hat motivates one legislator to make a speech about
6 a statute is not necessarily what motivates scores of others to enact it, and the stakes are
7 sufficiently high for us to eschew guesswork”); *accord Ariz. Citizens Clean Elections*
8 *Comm’n v. Brain*, 234 Ariz. 322, 325 ¶12 (2014) (“[A] legislator, lobbyist, or other
9 interested party lacks competence to testify about legislative intent in passing a law...”).
10 “Even when an argument about legislative motive is backed by statements made by
11 legislators who voted for a law, [the Court has] been reluctant to attribute those motives
12 to the legislative body as a whole.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215,
13 253–54 (2022).

14 Notably, Plaintiffs cannot cite a single case that adopts this mode of analysis. And
15 as a matter of logic, the Legislature could choose to enact narrower provisions in certain
16 bills but choose to include multiple of those provisions in a referral to voters—so long as
17 they relate to one general subject. *See Litchfield*, 125 Ariz. at 224 (“Subject . . . is to be
18 given a broad and extended meaning, so as to allow the legislature full scope to include in
19 one act all matters having a logical or natural connection.”).

20 If anything, the fact that certain provisions in HCR 2060 individually passed both
21 houses of the Legislature *undermines* Plaintiffs’ claim that HCR 2060 constitutes
22 impermissible logrolling. This is because their passage demonstrates that those provisions
23 have majority legislative support on their own.

24 Rather than adding a requirement to the single-subject rule that is not based on the
25 constitution’s text or case law and that would require the court to improperly speculate
26 about legislative intent, the Court should apply the existing single-subject rule precedent
27 to the four-corners of HCR 2060. *See Part I(A)-(B)*.

28

1 **3. The Separate Amendment Rule for Constitutional Amendments**
2 **and Out-of-State Cases Do Not Change the Result Here**

3 The *Lucha* Motion makes two additional arguments that HCR 2060 violates the
4 single subject rule, both of which are contrary to binding Arizona law. First, it asks this
5 Court to “borrow[] analysis from the separate amendment rule.” *Lucha* Motion at 7-8. This
6 is improper for multiple reasons. This Court is bound by existing case law, including
7 *Hoffman* and *ASBA*, which make clear what the law is on the single-subject rule. *See* Part
8 I(A), *supra*. The separate amendment case law expressly acknowledges that it is applying
9 a different and “stricter test” for constitutional amendments that is grounded in a different
10 provision of the Arizona constitution (Article 21, § 1). *Clean Elections Inst., Inc. v.*
11 *Brewer*, 209 Ariz. 241, 244 ¶6 (2004) (“[T]he Arizona Constitution establishes a *stricter*
12 *test* for determining whether a proposal involves more than one constitutional
13 amendment.” (emphasis added)).² It would be directly contrary to binding case law to
14 apply (aka “borrow ... from”) the separate amendment rule here.

15 Second, and telegraphing the weakness of their arguments, the *Lucha* Motion asks
16 the Court to apply case law from Washington and Oklahoma interpreting different
17 constitutional language. This is improper for two reasons. First, this Court is bound by the
18 Arizona appellate courts’ interpretation. Second, the Washington and Oklahoma
19 constitutions lack key language that is present in Arizona’s single subject rule and that
20 was specifically added to give the Legislature discretion: “and matters properly connected
21 therewith.” Ariz. Const. art. 4, pt. 2, § 13. This was added during the Arizona
22 constitutional convention as an amendment to substitute proposition 6, specifically to
23 avoid courts unnecessarily invalidating laws. *Compare The Records of the Arizona*
24 *Constitutional Convention of 1910*, at 591 (John S. Goff ed.) (floor amendment by Cobb),
25 *with id.* at 1048 (text of substitute proposition 6 reported by committee, which stated “No
26 bill shall embrace more than one subject, and that shall be expressed in the title”).³

27 ² *Clean Elections Institute* was abrogated on other grounds by *ASBA*. *See* 252 Ariz. 219
28 (abrogating severability analysis under single-subject rule).

³ This book is available at <https://azmemory.azlibrary.gov/nodes/view/271077>.

1 The key difference between Arizona and these other state’s requirements is
2 illustrated by comparing the statement that “each of I-124’s provisions is arguably
3 related,” *Am. Hotel & Lodging Ass’n v. City of Seattle*, 432 P.3d 434, 442 (Wash. Ct. App.
4 2018), with *ASBA*’s conclusion as to SB 1819 that “the contested sections do not relate to
5 the budget at all; they are devoid of any reference or significance to budget procedure.”
6 252 Ariz. at 228 ¶36. As the Arizona Supreme Court stated, “[a]ll that is necessary is that
7 the act should embrace some one general subject: and by this is meant, merely, that all
8 matters treated of should fall under some one general idea.” *Id.* at ¶33 (citation omitted).
9 The *Lucha* Plaintiffs’ argument is fundamentally at odds with the binding test in Arizona
10 and therefore must be rejected.

11 **II. Plaintiffs Are Not Entitled to Declaratory or Injunctive Relief**

12 Because Plaintiffs’ claims fail on the merits (*see* Part I, *supra*), they are not entitled
13 to any relief in this suit. The Legislature has all lawmaking powers that are not expressly
14 or impliedly removed from it. *Adams v. Bolin*, 74 Ariz. 269, 283 (1952). Moreover, “the
15 Legislature has the constitutional power to refer to the electors an act,” and “unless
16 specially authorized by law an injunction will not lie to restrain the exercise of legislative
17 functions nor in any manner to interfere in the legislative process.” *Id.* at 285-86. Here,
18 Plaintiffs have not met their burden of showing HCR 2060 lacks “legal sufficiency.”
19 A.R.S. § 19-161(A). And as the Arizona Supreme Court recognized, “[i]f a ballot measure
20 meets the statutory and constitutional requirements to appear on the ballot, its wisdom as
21 a policy matter is for the voters to decide.” *Hoffman*, 245 Ariz. at 316-17 ¶17 (citation
22 omitted). The Secretary of State must therefore submit HCR 2060 to the voters for their
23 approval or disapproval at the November 2024 general election.

24 **III. Request for Attorneys’ Fees and Rule 54(b) or (c) Language**

25 Intervenor-Defendants request attorneys’ fees under A.R.S. § 12-348.01 if the
26 State or any other government defendant argues that HCR 2060 is legally insufficient to
27
28

1 appear on the ballot or otherwise fails to either maintain a nominal position or defend HCR
2 2060 in this proceeding.

3 In addition, Intervenor-Defendants request that the Court resolve the Motions in a
4 signed order with appropriate Rule 54(b) or 54(c) language to permit expedited appeal. If
5 the Court rules that HCR 2060 satisfies the single-subject rule and no government
6 defendant challenges the legal sufficiency of HCR 2060, then Intervenor-Defendants
7 request the Court include Rule 54(c). Otherwise, the Court should enter judgment under
8 54(b), with the only remaining issue being attorneys' fees.

9 **CONCLUSION**

10 The Court should deny the Motions because HCR 2060 does not violate the single-
11 subject rule. Pursuant to § 19-161(B), the Court should issue a signed order with Rule
12 54(c) or 54(b) language in favor of all Defendants on Counts I and II in each of the
13 complaints as soon as possible.

14 RESPECTFULLY SUBMITTED this 26th day of June, 2024.

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