ARIZONA COURT OF APPEALS

DIVISION ONE

PUENTE, *et al.*, Plaintiffs-Appellants, v. ARIZONA STATE LEGISLATURE, Defendant-Appellee.	No. 1 CA-CV-20-0710 Maricopa County Superior Court No. CV2019-014945

ANSWERING BRIEF OF DEFENDANT-APPELLEE ARIZONA STATE LEGISLATURE

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INTRODUCTION

Defendant-Appellee Arizona State Legislature (the "Legislature")—through Karen Fann, President of the Arizona Senate, and Russell Bowers, Speaker of the Arizona House of Representatives—respectfully submits this Answering Brief. The Court should affirm the dismissal of Plaintiffs-Appellants' ("Puente") allegations that certain individual legislators violated the Arizona Open Meeting Law, A.R.S. § 38-431, *et seq*. ("OML"). Because both the OML and the Arizona Constitution commit to the legislative branch plenary control over the conduct of its own proceedings, Puente has failed to present a viable claim amenable to judicial relief.

STATEMENT OF THE ISSUES

1. The OML provides that "[e]ither house of the legislature may adopt a rule or procedure . . . to provide an exemption" to the OML. *See* A.R.S. § 38-431.08(D). Given that text and the adoption of internal legislative rules governing the meetings of each chamber and committees thereof, is the Legislature excepted from the OML?

2. The Arizona Constitution recognizes the authority of each legislative house to "determine its own rules of procedure," ARIZ. CONST. art. IV, pt. 2, § 8, and to govern committee meetings in whatever "manner . . . as each house may prescribe," *id*. § 9. Was the trial court correct in following the decisions of eight

other states, and similar decisions in federal courts, and holding that the constitutional text commits the claims in this case to the legislative branch, rendering them nonjusticiable political questions?

3. Does the record support alternative bases for affirming the trial court's ruling, namely:

a. Can the court grant the requested relief against the named parties?

b. Does the "political caucus" exception to the OML apply?

STATEMENT OF THE CASE

Solely for purposes of this appeal, the defendants (and the Court) must assume the truth of the factual allegations set forth in Puente's complaint (the "Complaint").

On December 4, 2019, Puente initiated this action, seeking declaratory and injunctive orders to enforce the provisions of the OML in connection with an upcoming private conference hosted by a third-party nonprofit organization, the American Legislative Exchange Council ("ALEC"), which Puente alleged would be attended by various Arizona legislators—all of whom are members of the Republican caucus—as well as by "legislators from around the country and private corporations." Index of Record ("IR") 1 at 9–11. The Complaint proffered a litany of bills—some enacted more than a decade ago—that Puente insinuates trace their lineage to various ALEC proposals. *See id.* at 11–13. It did not, however, contain any allegations of any articulable "legal actions," *see* A.R.S. § 38-431(3), that

occurred—or that Puente anticipated would occur—at the December 2019 ALEC summit. Rather, the Complaint vaguely averred that "[u]pon information and belief," attending legislators constituting a "quorum" of one or more legislative committees will "discuss, propose, and deliberate on" various unspecified "model bills" that might be subsequently introduced as legislation. *See id.* at 13.

On November 5, 2020 the trial court granted the Legislature's motion to dismiss pursuant to Arizona Rule of Procedure 12(b)(6), holding that Puente's claims constituted nonjusticiable political questions. *See* IR 31. This appeal followed.

SUMMARY OF THE ARGUMENT

This Court can and should dispatch Puente's arguments by reference to a single sentence of the OML: "Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article." A.R.S. § 38-431.08(D). Each house of the Legislature undisputedly has enacted its own internal rules governing the notice and agenda procedures of its committees, thereby negating whatever private cause of action Puente might assert under the OML.

Even if the Court finds it necessary to venture onto constitutional grounds, the trial court correctly concluded that the Arizona Constitution textually commits to the Legislature its internal rules of procedure. *See* ARIZ. CONST. art. IV, pt. 2, §§ 8-9.

It accordingly joined **at least eight other states** in holding that whether and to what extent a state legislature affords public access to its meetings is a nonjusticiable political question—a conclusion that also aligns with the federal courts' construction of a cognate provision in the United States Constitution.

Puente counters that its claims are justiciable because the OML supplies a "judicially manageable standard" for adjudicating the Legislature's compliance with that statute and that affirmance of the trial court would place the Legislature entirely beyond the ken of the courts (and, in support of these positions, points to a 45-year-old law review article questioning the metaphysical existence of the political question doctrine, *see* Op. Br. at 20). Both contentions, however, rely on a specious confounding of ***constitutional*** constraints with ***statutory*** directives. The workings of the Legislature always are subordinate to the Constitution's commands. If even an internal legislative action contravened a constitutionally prescribed procedure or abridged an individual citizen's constitutionally protected fundamental rights, the courts of course are empowered to intervene and fashion appropriate relief.

But the OML is not enshrined in the Arizona Constitution; as a statutory measure, it occupies a lesser legal plane. In assessing whether a claim is governed by a "judicially manageable standard," the sole lodestar for such a standard is the Constitution itself. Here, the Arizona Constitution vests in each house of the Legislature an unalloyed authority to "determine its own rules of procedure," art. IV,

pt. 2, § 8, and to control the conduct of committee proceedings "in such manner and under such penalties as each house may prescribe," *id.* § 9. Unless a legislative house offends some *other* provision of the Constitution (an allegation Puente has never advanced), there is no discernible objective metric by which a court could objectively determine whether a legislative house has acted "wrongfully" or "unlawfully" by, for example, excluding members of the public from its proceedings. To argue (as Puente does) that the OML offers such a criterion is to posit that one iteration of the Legislature can, by statute, truncate the sovereign prerogatives of the institution—a proposition that subverts the concept of constitutional government.

Finally, Puente's complaint is riddled with additional defects that preclude any possibility of relief. The sole named defendant—*i.e.*, the "Arizona State Legislature"—is never alleged to have itself engaged in ***any*** material acts or omissions whatsoever, and is not a proxy for the individual legislators whose ostensible "meetings" underlie the Complaint. Further, because the meetings alleged by Puente's Complaint would—if they occurred at all—constitute a "political caucus of the legislature," they are exempt from the OML in any event. *See* A.R.S. § 38-431.08(A)(1).

ARGUMENT

I. The OML Authorizes the Legislature to Exempt Itself from the Statute's Requirements

Although constitutional scruples correctly impelled the trial court's dismissal of Puente's claims, the OML itself supplies the most straightforward basis for disposing of this appeal. While the Legislature is included in the catalogue of public bodies to which the OML applies, *see* A.R.S. § 38-431 (6), the statute separately recognizes that "[e]ither house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article." *Id.* § 38-431.08(D).

To this end, Arizona House of Representatives Rule 32(H) directs that "the meeting notice and agenda requirements for the House, Committee of the Whole and all standing, select and joint committees and subcommittees shall be governed ***exclusively*** by these rules" [emphasis added], thereby supplanting the OML entirely.[1] The Arizona Senate similarly has exercised its constitutional privilege to independently prescribe the rules that govern committee proceedings. *See* Ariz. Senate Rules, Fifty-Fourth Legislature, Rule 7.[2] And both houses have explicitly

[1] The Rules of the House of Representatives of the State of Arizona, Fifty-Fourth Legislature, are available at: https://www.azleg.gov/alispdfs/54leg/House/54rd_leg_rules_1st_session.pdf.

[2] *Available at* https://www.azleg.gov/alispdfs/54leg/senate/RULES_2019_2020.pdf.

subordinated statutes to the Constitution *and* to the house's own internal rules in itemizing the hierarchy of authorities that govern parliamentary practice and procedure. *See* House Rule 29; Senate Rule 24.

Puente protests that there is no "conflict" between the OML and the relevant House and Senate Rules, *see* Op. Br. at 48–49—but this rejoinder misses the point. The OML does not yield ***only*** to those particular rules that are irreconcilable with its directives. Rather, it recognizes that a legislative house may displace the OML entirely simply by enacting its own rules governing the noticing and conduct of meetings. Whether or to what extent such rules align with the OML is immaterial; when (as here) each house has exercised its rulemaking prerogatives, the OML is superseded, and any right of action arising out of that statute is extinguished. Because Puente could not—and seemingly does not—assert a purported private right of action to enforce internal House Rules or Senate Rules, there is no cognizable statutory predicate for its claims.

The trial court appeared to subsume A.R.S. § 38-431.08(D) into its broader justiciability analysis. *See* IR 31 at 4. But because the OML itself incorporates the Legislature's superordinate constitutional power to order its own proceedings, *see* ARIZ. CONST. art. IV, pt. 2, §§ 8–9, the Court can resolve this appeal under the plain text of Section 38-431.08(D). *See generally Petolicchio v. Santa Cruz County Fair & Rodeo Ass'n, Inc.*, 177 Ariz. 256, 259 (1994) ("Arizona's courts do not

reach constitutional issues if proper construction of a statute makes it unnecessary in determining the merits of the action.").

If and to the extent the Court finds it necessary to look beyond the four corners of Section 38-431.08(D), however, it should affirm the trial court's conclusion that Puente's claims are nonjusticiable.

II. Puente's Claims Are Nonjusticiable Because Article IV of the Arizona Constitution Textually Commits the Promulgation and Enforcement of Legislative Procedures, Including the Conduct of Committee Meetings, Exclusively to Each House of the Legislature, Subject Only to Other Provisions of the Constitution Itself

Puente constructs its Opening Brief on a confused conflation of justiciability precepts, separation of powers doctrines, as-applied constitutional challenges, individual fundamental rights, and statutory construction. This confounded amalgamation of arguments, however, succeeds only in obscuring a straightforward proposition: unless it contravenes some other provision of the state or federal constitutions, the Legislature may structure its lawmaking proceedings in any manner it deems appropriate. Judicial attempts to police the Legislature's adherence to statutory directives or internal rules would entail an untenable foray into the domain of a co-equal branch.

A resort to first principles conduces clarity. The Court can adjudicate this appeal simply by reference to three basic maxims.

First, when there is a "textually demonstrable constitutional commitment" of an issue to the legislative or executive branch, disputes arising out of the discharge of that function or responsibility are nonjusticiable. *Baker v. Carr*, 369 U.S. 186, 217 (1962); *see also Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280, ¶ 36 (2019) ("Though federal justiciability jurisprudence is not binding on Arizona courts, the factors federal courts use to determine whether a case is justiciable are instructive.").

Second, the Arizona Constitution directs that "[e]ach house" of the Legislature "shall . . . determine its own rules of procedure," art. IV, pt. 2, § 8, and that "a smaller number" of individual legislators "may meet, adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe," *id.* § 9. Neither of these provisions mandates public access to legislative proceedings or otherwise enumerates any substantive criteria, constraints or qualifications cabining the legislative rulemaking power. *See generally Mecham v. Gordon*, 156 Ariz. 297, 302 (1988) ("The Constitution wisely leaves impeachment trial procedures and rules to the Senate. Absent a clear constitutional mandate, we refuse to usurp the Senate's prerogatives in this area."). There accordingly is no judicially manageable standard in the Arizona Constitution itself by which a court could assess the validity, application or enforcement of legislative procedures.

Third, the judiciary may—and indeed must—interpret and enforce extrinsic ***constitutional*** limitations on legislative powers and duties. *See Powell v. McCormick*, 395 U.S. 486 (1969) (holding that Congress was limited to the three criteria set forth in Article I, Section 2 of the U.S. Constitution when exercising its power to judge the qualifications of Members); *Biggs v. Betlach*, 243 Ariz. 256 (2017) (evaluating whether constitutional supermajority vote requirement for most new taxes applied to "assessment" on hospitals). Here, by contrast, Puente asks the Court to superintend individual legislators' conduct for compliance with the ***statutory*** provisions of the OML. Despite Puente's struggle to obscure it, this abiding distinction ultimately debilitates its claims. As discussed *infra* Section II.C, nearly all the cases that Puente trumpets as embodying judicial interdictions of legislative overreach feature the courts' vindication of constraints imposed by the ***Constitution itself***, not statutory enactments.

Each of these three precepts is discussed in more detail below.

A. Courts Do Not Adjudicate Matters That Are "Textually Committed" to Another Branch

There are certain disputes that, while nominally presenting questions of law, are so innately suffused with institutional dimensions as to render them unamenable to judicial resolution. Recognizing that such cases "involve decisions that the constitution commits to one of the political branches of government," *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485, ¶ 7 (2006), "courts refrain

from addressing political questions." *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 192, ¶ 12 (2007); *see also Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) ("The political question doctrine first found expression in Chief Justice Marshall's observation that '[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to [another branch], can never be made in this court.'") (internal citation omitted).[3]

The political question doctrine is aminated by and intertwined with the absolute immunities that attach specifically to legislative functions—which, in turn, further fortify the constitutional perimeter demarcating the legislative and judicial spheres. *See generally Consumers Union of United States v. Periodical Correspondents' Ass'n*, 515 F.2d 1341, 1346 (D.C. Cir. 1975) (observing that claims challenging congressional rule implicated both political question concerns and legislative immunity). Individual legislators "shall not be subject to any civil process during the session of the legislature," ARIZ. CONST. art. IV, pt. 2, § 6, and the more expansive "speech or debate" immunity, *see id.* § 7, provides that when

[3] Claims that are not susceptible to resolution by "judicially discoverable and manageable standards" likewise are political questions. *Kromko*, 216 Ariz. at 192, ¶ 11. In practice, however, "the concept of a textual commitment to a coordinate political department is not completely separate from the concept of a lack of judicially discoverable and manageable standards for resolving it; the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch." *Nixon v. United States*, 506 U.S. 224, 228-29 (1993).

legislators "are acting within their 'legitimate legislative sphere,' the Speech or Debate Clause serves as an absolute bar to criminal prosecution or civil liability." *Fields v. Ariz. Indep. Redistricting Comm'n*, 206 Ariz. 130, 136, ¶¶ 15-16 (App. 2003) (quoting *Gravel v. United States*, 408 U.S. 606 (1972)); *Mesnard v. Campagnolo*, --- P.3d ---, 2021 WL 2707549 ¶¶ 12-13 (Ariz. June 30, 2021) (discussing and applying legislative immunity); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) ("Absolute legislative immunity attaches to all actions taken 'in the sphere of legitimate legislative activity.'"); *Eastland v. U. S. Servicemen's Fund*, 421 U.S. 491, 503 (1975) ("Just as a criminal prosecution infringes upon the independence which the [Speech and Debate] Clause is designed to preserve, a private civil action, whether for an injunction or damages, creates a distraction and forces Members to divert their time, energy, and attention from their legislative tasks to defend the litigation." (emphasis added)).[4] The upshot is that while claims contesting the constitutional validity of statutes actually enacted by the Legislature certainly are subject to judicial cognizance, the Arizona Constitution largely insulates the antecedent activities of each house and the conduct of its members from surveillance by the other branches.

[4] Puente's efforts to circumvent these immunities by suing "the Arizona State Legislature," rather than individual members, is troubled by other problems, *see infra* Section III.A.

It bears emphasis that a finding of nonjusticiability does not imply a disposition of any substantive constitutional claim. To the contrary, the political question doctrine embodies the judiciary's abnegation of the power to decide certain claims framed as constitutional grievances. "A determination that an issue is a political question is 'very different from determining that specific [governmental] action does not violate the Constitution. That determination [that an action is legal] is a decision on the merits that reflects the *exercise* of judicial review, rather than the *abstention* from judicial review that would be appropriate in the case of a true political question.'" *Forty-Seventh Legislature*, 213 Ariz. at 485, ¶ 7 (quoting *U.S. Dep't of Commerce v. Montana,* 503 U.S. 442, 458 (1992)).

In a dizzying display of cognitive gymnastics, Puente concedes that the Legislature has never contested the constitutional validity of the OML and that the trial court accordingly never considered any such defense—but then insists that this Court nevertheless must adjudicate an as-applied challenge to the OML. *See* Op. Br. at 42. Vanquishing its own strawman, Puente then spills some eight pages of ink assuring the Court that the OML has a clean bill of constitutional health. *See id.* at 43–51.

Puente's contrived "as-applied" challenge to the OML fundamentally misunderstands the concept of justiciability. Justiciability arguments do not pivot on *what* the law does or does not permit or require in a given setting, but rather on

who decides that question. The political question doctrine is founded in a recognition that when adjudication of a claim will entail incursions into the internal domain of the legislature or executive, respect for those coequal branches necessitates dismissal. It encapsulates an acknowledgment that "[s]ometimes . . . the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights. In such a case the claim is said to present a 'political question' and to be nonjusticiable—outside the courts' competence and therefore beyond the courts' jurisdiction." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019) (internal citations omitted); *see also* Wright & Miller, 33 FED. PRAC. & PROC. JUDICIAL REVIEW § 8331 (2d ed.) ("The term 'justiciability' captures an amorphous set of doctrines, including standing, ripeness, mootness, and political question, that speak to limits on the decisional authority of the . . . courts.").

No party disputes that the OML is constitutionally sound. Indeed, the Legislature adheres to it rigorously and consistently. Rather, the question in this appeal bears an entirely different complexion: ***which branch***—the judicial or the legislative—does the Arizona Constitution ultimately charge with overseeing the conduct of internal legislative proceedings?

B. The Constitution Textually Commits to Each House of the Legislature the Exclusive Authority to Determine Whether and To What Extent Meetings Are Open to the Public

The framers of the Arizona Constitution codified their intentions in terms that are unqualified and unequivocal: "[e]ach house" of the Legislature may "determine its own rules of procedure." ARIZ. CONST. art. IV, pt. 2, § 8. Further, the Legislature's rulemaking power is not confined only to proceedings of the whole house. To the contrary, Article IV, Part 2, Section 9 makes clear that this authority extends to the house's organizational subcomponents, stating that "[t]he majority of the members of each house shall constitute a quorum to do business, but a smaller number may ***meet***, adjourn from day to day, and compel the attendance of absent members, ***in such manner and under such penalties as each house may prescribe***" (emphasis added).[5] In other words, the authority to define what constitutes a

[5] Defying basic grammatical canons, Puente insists that the phrase, "in such manner and under such penalties as each house may prescribe" modifies only "compel the attendance of absent members." Op. Br. at 19. The placement of a comma between these two clauses, however, corroborates the intuitive conclusion that each house's plenary authority to "prescribe" the "manner" of committee proceedings extends to their "meet[ings]." *See Elliot Coal Min. Co., Inc. v. Dir., Office of Workers' Comp. Programs*, 17 F.3d 616, 630 (3d Cir. 1994) ("Th[e] use of a comma to set off a modifying phrase from other clauses indicates that the qualifying language is to be applied to all of the previous phrases and not merely the immediately preceding phrase."); *Am. Int'l Group, Inc. v. Bank of Am. Corp.*, 712 F.3d 775, 781–82 (2d Cir. 2013) ("One of the methods by which a writer indicates whether a modifier that follows a list of nouns or phrases is intended to modify the entire list, or only the immediate antecedent, is by punctuation—specifically by whether the list is separated from the subsequent modifier by a comma. When there is no comma . . . the subsequent modifier is ordinarily understood to apply only to

"committee," oversee the conduct of its meetings, and provide sanctions for infractions of such rules resides wholly and exclusively in that "house"—not in the courts.

1. Puente Erroneously Confuses Justiciable Interbranch Disputes with Internal Legislative Procedural Functions

Article IV's explicit and undeniable textual grant of authority to a single branch of government distinguishes this appeal from *Zivotofsky v. Clinton*, 566 U.S. 189 (2012)—the apparent cornerstone of Puente's arguments—which deemed justiciable a conflict between a statute and an executive directive relating to the geopolitical status of Jerusalem. As the Arizona Supreme Court likewise has recognized, a critical distinction differentiates an interbranch dispute between the Legislature and Executive—which the judiciary generally must mediate—from claims premised on one branch's discharge of its own constitutionally ordained internal functions. *See Brewer v. Burns*, 222 Ariz. 234, 239, ¶ 21 (2009). ("The issue here is not whether the Legislature should include particular items in a budget or enact particular legislation. Such issues, like the Governor's decision whether to veto or approve a bill or the Legislature's decision whether to attempt an override, clearly are political questions. Instead, this case concerns the respective powers of the Legislature and the Governor once the Legislature has finally passed a bill."

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its last antecedent. When a comma is included . . . the modifier is generally understood to apply to the entire series.").

(internal citation omitted)). Reasoning that both sides had presented credible arguments as to whether the power to determine the status of Jerusalem for certain diplomatic purposes resided with Congress or, alternatively, the President, the *Zivotofsky* Court concluded that the dispute was justiciable. *See* 566 U.S. at 201; *see also Forty-Seventh Legislature*, 213 Ariz. at 485, ¶ 9 (adjudicating the scope of the Governor's line item veto power).

Here, however, the Court is not tasked with delineating the relative authority of the legislative and executive branches—a core judicial competency. Rather, Puente seeks to enlist the Court in evaluating the internal legislative functions of "determin[ing] . . . rules of procedure" and "prescrib[ing]" "the manner" in which legislative committees may meet and conduct business. *See* ARIZ. CONST. art. IV, pt. 2, §§ 8–9.

2. A Statute Cannot Supply a "Judicially Manageable Standard" to Constrain the Exercise of a Constitutional Function

Notwithstanding the absence of any interbranch dispute, Puente's reliance on *Zivotofsky* founders for a more fundamental reason. Whereas *Zivotofsky* featured a genuine interpretive ambiguity concerning the Article II prerogatives of the President relative to the Article I powers of Congress, there is no plausible argument that the governance of legislative committee meetings—to include whether and to what extent such convocations are open to the public—is ***not*** textually committed solely to the Legislature by Article IV, Part 2, Sections 8 and 9. Puente insists that

the legislative houses' authority in this regard "is not absolute" and does not "signal[] total, unreviewable autonomy." Op. Br. at 18. But it is conspicuously at a loss to explain where exactly in the ***constitutional*** text those ostensible limits may be found and precisely what they are.[6] Nothing in the Constitution supplies any rubric by which courts could qualitatively assess the validity or (non)-enforcement of a legislative procedure, to include limitations on public access to ostensible "meetings." *See Common Cause v. Biden*, 909 F. Supp. 2d 9 (D.D.C. 2012) (dismissing as nonjusticiable a challenge to Senate rules promulgated pursuant to similar grant of legislative authority in the federal Constitution "because Plaintiffs cannot identify any ***constitutional*** provision that expressly limits the authority committed to the Senate" to devise its own procedural rules (emphasis added)); *see also Nixon v. United States*, 506 U.S. 224, 238 (1993) (holding that the federal Constitution "does not provide an identifiable textual limit on the authority" of the U.S. Senate to "try" impeached officials).

In countering that there are "judicially manageable" standards for adjudicating its claims, Puente relies solely on the OML. *See* Op. Br. 30–32. But this argument

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[6] To be sure, other provisions of the Arizona Constitution (such as the various fundamental rights secured by article II) may well operate as implicit checks on legislative rulemaking. *See infra* Section II.C. But Puente does not—and could not—contend that the allegations underlying its claims (*i.e.*, the exclusion of the public from ostensible "meetings" of legislative committees at ALEC) transgresses any *constitutionally* protected right or interest.

underscores Puente's systemic—and erroneous—conflation of endogenous constitutional constraints on the legislative power with external statutory directives. *See infra* Section II.C. The OML is not in the Arizona Constitution and cannot be imported into it as an implicit constriction of the Legislature's authority under Article IV, Part 2, Sections 8–9.

This Court's decision in *Fogliano v. Brain*, 229 Ariz. 12 (App. 2011), underscores that statutory provisions do not supply "judicially manageable" standards to police the discharge of constitutional legislative functions. While agreeing that a voter-approved statute unambiguously required the Legislature to provide supplemental funding for a Medicaid expansion program, the Court dismissed as nonjusticiable claims that the Legislature had failed to comply with this mandate, explaining that "whether and how much money can be paid out of the state treasury is clearly committed by our Constitution to those acting in a legislative capacity." *Id.* at 20, ¶ 24. *See also Fragoso v. Fell*, 210 Ariz. 427, 431, ¶ 13 (App. 2005) ("A statute or rule, of course, 'cannot circumvent or supplant . . . constitutional requirements.'" (internal citation omitted)). In other words, a statute cannot circumscribe, or furnish a basis for judicial oversight of, a constitutional function of the Legislature.

3. Courts in at Least Eight Other States Have Recognized That Legislative Compliance with Open Meeting Laws or Similar Procedural Statutes Is Nonjusticiable

It is precisely because the constitutional legislative rulemaking power is unencumbered by any textual limitations that state courts nationwide have held that their legislatures' compliance with the jurisdiction's open meeting statute (or equivalent enactment) is nonjusticiable. Considering allegations that non-public gatherings of certain legislators violated that state's open meeting law, the New Hampshire Supreme Court explained, in reasoning that resonates in this case,

> The legislature, alone, 'has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure.' The same is true of statutes that codify legislative procedural rules . . . We emphasize that the question before us is not whether the Right-to-Know Law applies to the legislature. By the statute's express terms, it does. The question before us is whether the legislature's alleged violation of the Right-to-Know Law is justiciable. We have concluded that this question is not justiciable . . . ."

Hughes v. Speaker of the N.H. House of Reps., 876 A.2d 736, 744, 746 (N.H. 2005) (internal citations omitted); *see also Ex parte Marsh*, 145 So. 3d 744, 751 (Ala. 2013) ("Because the Alabama Constitution gives the legislature the authority to establish its own procedural rules and because the Open Meetings Act must yield to the Alabama Constitution, the legislature's alleged violation of the Open Meetings Act or Rule 21 in this case is not justiciable. It is not the function of the judiciary to require the legislature to follow its own rules."); *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 339–40 (Alaska 1987) ("[B]ecause the constitution

commits to the legislature the authority to provide for its own rules of procedure, and because the question of whether a legislative committee meeting or caucus meeting shall be open or closed falls within this grant of authority, we regard the question whether the Legislators have violated the Open Meetings Act or [a legislative rule] to be nonjusticiable."); *Moffitt v. Willis*, 459 So.2d 1018, 1021 (Fla. 1984) (deeming nonjusticiable claims arising out of alleged "secret meetings" of legislators, observing that "a judicial determination of this matter hinges on the meaning of legislative committee meeting and what activity constitutes such a meeting. At this point, the judiciary comes into head-to-head conflict with the legislative rulemaking prerogative"); *Coggin v. Davey*, 211 S.E.2d 708, 710–11 (Ga. 1975) ("We do not believe that it can reasonably be argued that the House or Senate cannot pass an internal operating rule for its own procedures that is in conflict with a statute formerly enacted. We therefore hold that the 'Sunshine Law' is not applicable to the Legislative branch of the government and its committees."); *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496, 503 (Iowa 1996) ("The senate's decision to keep the records in question confidential falls within the constitutionally-granted power of the senate to determine its rules of proceedings."); *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001) (even assuming that legislature was within the scope of the open meetings law, "[b]inding the Legislature with procedural rules passed by another General Assembly would violate [the state

constitution's] grant of the right to the Legislature to determine its own rules."); *State ex rel. Ozanne v. Fitzgerald*, 798 N.W.2d 436, 440 (Wis. 2011) ("As the court has explained when legislation was challenged based on allegations that the legislature did not follow the relevant procedural statutes, 'this court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments.'" (internal citation omitted)); *cf. Citizens Action Coal. of Indiana v. Koch*, 51 N.E.3d 236, 242 (Ind. 2016) (construing public records act to apply to the Legislature but finding that its application to actual documents to present non-justiciable political question, reasoning that "to define for the legislature what constitutes its own work product, and to then order disclosure of such documents, would indeed be an interference with the internal operations of the General Assembly"). The trial court correctly heeded the reasoning of these tribunals, which vindicated bedrock separation of powers principles that transcend state-specific idiosyncrasies. This Court should do the same.

In sum, the "[t]he language of [Article IV, Part 2, Sections 8–9] is simple, explicit and all-inclusive. It cannot be misunderstood." *Kilpatrick v. Superior Court In & For Maricopa County*, 105 Ariz. 413, 419 (1970). By vesting in each legislative house a self-contained authority, unqualified by any enumerated parameters or criteria, to "determine" its own rules of procedure in the "manner" it chooses, these provisions are "a classic example of a demonstrable textual

commitment to another branch of government." *Rangel v. Boehner*, 20 F. Supp. 3d 148, 168–69 (D.D.C. 2013) (describing parallel congressional rulemaking authority in federal Constitution), *aff'd*, 785 F.3d 19 (D.C. Cir. 2015); *see also Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1172 (9th Cir. 2007) ("Article I of the Constitution provides that '[e]ach House may determine the Rules of its Proceedings.' In short, the Constitution textually commits the question of legislative procedural rules to Congress. Thus, whether Congress decides to hold a hearing on legislation applicable to the general public is a non-justiciable political question beyond our power to review.").

C. Legislative Procedures Are Limited Only by Other Constitutional Requirements and Individual Fundamental Rights

Puente propels its appeal largely on a false dichotomy that posits the "absolute autonomy" of the Legislature relative to the judiciary, Op. Br. at 40, as the inevitable alternative to indulging Puente's claims. But it is undisputed that legislative proceedings undoubtedly are subordinate to judicially enforceable constraints—to wit, those prescribed by the Constitution itself. Accordingly, a legislative rule or procedure that offends some identifiable constitutional command or that compromises a fundamental individual right is always amenable to judicial redress. *See United States v. Ballin*, 144 U.S. 1, 5 (1892) (acknowledging that Congress "may not by its rules ignore constitutional restraints or violate fundamental rights," but

that "within these limitations all matters of method are open to the determination of the house").

In this vein, Puente doggedly cites *Powell v. McCormick*, 395 U.S. 486 (1969), in insisting that the courts must monitor the Legislature's compliance with the OML. *Powell*, however, only affirms the courts' ability to ensure legislative compliance with ***the Constitution itself***. It does not admit any judicial competence to police the Legislature's adherence to ***statutory*** enactments in the conduct of its internal proceedings. Despite Puente's best efforts to confound it, that distinction ultimately extinguishes its claims.

The *Powell* Court held that because a duly elected congressman satisfied the three qualifications explicitly prescribed in Article I, Section 2 of the federal Constitution (*i.e.*, age, citizenship and residency), he was entitled to be seated in the House of Representatives. In other words, because application of the Constitution's text is a judicial function and the three prerequisites of House membership are expressly enumerated ***in the Constitution itself***, it necessarily followed that a congressman who complied with those objectively ascertainable qualifications could not be denied membership in the House. *See id.* at 550 (holding that "in judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution. Respondents concede that Powell met these").

In contrast, the applicable provisions of the Arizona Constitution categorically confer on each legislative house an unqualified power to control its own proceedings. They do not require, let alone address, any particular quantum of public access to, *e.g.*, committee meetings. Thus, a more apt analogue in the federal Constitution is actually Article I, Section 5, which—in language virtually identical to that found in its Arizona counterpart—provides that "[e]ach House may determine the rules of its proceedings."

Powell's inability to salvage Puente's claims is perhaps best illuminated by *Common Cause v. Biden*, 909 F. Supp. 2d 9 (D.D.C. 2012). There, the plaintiffs (which included a non-profit organization and several Members of Congress) challenged the U.S. Senate's filibuster rules as unconstitutional. Rejecting the plaintiffs' appeals to *Powell*, the court noted that in contrast to the Qualifications Clause, the Rulemaking Clause is not cabined by any judicially discernible metrics or restrictions in the Constitution itself. Accordingly, "because Plaintiffs cannot identify any constitutional provision that expressly limits the authority committed to the Senate" to devise its own procedural rules, their claims presented nonjusticiable political questions. *See id.* at 28; *see also Rangel*, 20 F. Supp. 3d at 169 (rejecting claims alleging violations of House Rules, explaining that "[t]he House may not, by enacting and enforcing its own rules of procedure, violate another constitutional provision or an individual's rights under the Constitution, but the exercise of its

discretion under the [Rulemaking] Clause is otherwise boundless—at least as far as this Court is concerned.").

The Arizona Supreme Court has recognized the same duality in the context of gubernatorial impeachments. While noting that a court "does have power to ensure that the legislature follows the constitutional rules on impeachment" as enumerated in the Constitution itself, *Mecham v. Gordon*, 156 Ariz. 297 (1988) (citing *Powell*), it emphasized that:

> The Constitution wisely leaves impeachment trial procedures and rules to the Senate . . . we refuse to usurp the Senate's prerogatives in this area. Article 3 of the state Constitution prohibits judicial interference in the legitimate functions of the other branches of our government. We will not tell the legislature when to meet, what its agenda should be, what it should submit to the people, what bills it may draft or what language it may use. The separation of powers required by our Constitution prohibits us from intervening in the legislative process.

Id. at 302 (citing *Powell*, 395 U.S. at 506). In other words, unless and until the Senate traverses a constitutional boundary, its internal procedures cannot beget judicially cognizable claims by third parties.

Indeed, virtually[7] every case cited by Puente as countenancing judicial intervention in legislative proceedings featured allegations that the legislative body

[7] The sole arguable exception is *United States v. Smith*, 286 U.S. 6 (1932), a case decided 30 years before the U.S. Supreme Court birthed the political question doctrine in *Baker v. Carr*.

either had (1) defied a ***constitutionally*** required stricture[8] or (2) infringed the fundamental rights or liberty interests of an individual citizen.[9] Puente's attempt to alchemize the judiciary's abiding responsibility to enforce the Constitution into a vehicle to police the Legislature's alleged adherence to the OML falls flat. No statute could ever constrict the scope of a constitutional prerogative. Even assuming that the Thirty-Fifth Legislature wished to bind itself to the OML when defining the term "public body" to include the Legislature, *see* 1982 Ariz. Session Laws ch. 278, § 1, the intent of one iteration of the Legislature did not—and could not—abridge

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[8] *See, e.g.*, *United States v. Munoz-Flores*, 495 U.S. 385 (1990) (allegations that bill had not complied with Article I, § 7's requirement that revenue-raising bills must originate in the House of Representatives, rather than the Senate); *INS v. Chadha*, 462 U.S. 919 (1983) (allegations that legislative veto violated the bicameralism and presentment requirements of the federal Constitution); *Common Cause/Pa. v. Commonwealth*, 710 A.2d 108 (Pa. Commw. Ct. 1998) (allegations that bill had not complied with various procedural requirements of the Pennsylvania Constitution); *Gregg v. Barrett*, 771 F.2d 539, 544-45 (D.C. Cir. 1985) (dismissing on remedial discretion grounds congressional plaintiffs' claims that house had violated constitutional requirement of maintaining an accurate journal of proceedings).

[9] *See, e.g.*, *Yellin v. United States*, 374 U.S. 109 (1963) (considering claims of individual convicted of contempt of Congress); *Christoffel v. United States*, 338 U.S. 84 (1949) (considering claims of criminal defendant convicted of perjury based on congressional testimony); *Vander Jagt v. O'Neill*, 699 F.2d 1166, 1173 (D.C. Cir. 1982) (holding that court could consider ***constitutional*** challenge to congressional rules, explaining that "Article I does not alter our judicial responsibility to say what rules Congress may not adopt because of constitutional infirmity"); *Davids v. Akers*, 549 F.2d 120 (9th Cir. 1977) (claims that legislative rules violated plaintiffs' First and Fourteenth Amendment rights); *Gregg*, 771 F.2d at 548-49 (dismissing private plaintiffs' claims that Congress' alleged failure to maintain accurate records violated their First Amendment rights).

the institution's sovereign power to control the conduct of its own proceedings. *See generally Higgins' Estate v. Hubbs*, 31 Ariz. 252, 264 (1926) (rejecting "an attempt by one Legislature to limit or bind the acts of a future one. That this cannot be done is, of course, undoubted. The authority of the Legislature is limited only by the Constitution itself."); *see also Fogliano*, 229 Ariz. at 20, ¶ 24 (holding that the Legislature's compliance (or lack thereof) with statute requiring certain appropriations "is, under our Constitution, left to the Legislature, not the judiciary").

While the OML may evince some generalized and inchoate public interest in transparency, it does not embody a judicially enforceable "fundamental right," *see Ballin*, 144 U.S. at 5, that can abridge the Legislature's constitutionally secured functions and prerogatives. *See also Fogliano*, 229 Ariz. at 21, ¶ 29 (acknowledging the potential adverse impact of appropriations decisions on Medicaid recipients, but concluding that "resolution of this issue is entrusted to the Legislature's judgment" by the Arizona Constitution).

In sum, Article IV, Part 2, Sections 8–9 textually commit internal legislative proceedings, to include the conduct of putative committee meetings, wholly and exclusively to each legislative house. They enumerate no caveats, limitations or criteria that a court could fashion into a judicially manageable standard for determining whether, for example, a legislative committee provided for some "sufficient" degree of public access. The OML, as a statutory enactment, cannot

cabin or restrict the Legislature's constitutional entitlements. For this reason, and because Puente cannot allege that the supposed (non)-enforcement of any legislative procedure has violated any identifiable "fundamental right," the trial court correctly dismissed its claims as nonjusticiable.

III. Puente's Claims Fail as a Matter of Law on the Additional Grounds That Its Complaint Pleads No Viable Claim for Relief and the Alleged "Meetings" Are Exempt from the OML Under the Political Caucus Exception

The Court can and should resolve this appeal simply by ratifying the trial court's cogent and correct analysis. That said, this Court "may also 'affirm a trial court on any basis supported by the record.'" *Leflet v. Redwood Fire & Cas. Ins. Co.*, 226 Ariz. 297, 300, ¶ 12 (App. 2011); *see also State v. Wassenaar*, 215 Ariz. 565, 577, ¶ 50 (App. 2007) (citing *State v. Robinson*, 153 Ariz. 191, 199 (1987)). To this end, the Legislature pointed out to the trial court two independent defects on the face of Puente's Complaint that independently compelled its summary dismissal. *See* IR 13 at 9–13; IR 27 at 8–11.

A. The Court Cannot Enter Against the Legislature the Sweeping and Extraordinary Remedies Puente Seeks

When a plaintiff cannot articulate a legal claim "upon which relief may be granted," dismissal must follow. *See* Ariz. R. Civ. P. 12(b)(6); *Fappani v. Bratton*, 243 Ariz. 306, 309, ¶ 8 (App. 2017) (court must dismiss when "the plaintiff, as a matter of law, would not be entitled to relief under any interpretation of the facts

susceptible of proof"). Even assuming *arguendo* that the legislators identified in the Complaint assembled in one or more "meetings" of some legislative "committee," Puente still would not be entitled to any cognizable remedy against ***this*** defendant (*i.e.*, the "Arizona State Legislature").

Puente's Complaint envisages four variants of relief. First, Puente seeks a declaration that the named legislators "violated" the OML at the ALEC conference. IR 1 at 15, ¶ A. But there is not a congruence of identity between ***those*** individual legislators and "the Arizona State Legislature." This point is important. As discussed *supra* Section II.A, individual legislators are constitutionally immune from civil liability arising out of any act "within their 'legitimate legislative sphere,'" *Fields*, 206 Ariz. at 136, ¶ 16; *Mesnard*, --- P.3d ---, 2021 WL 2707549 ¶¶ 12-13; *see also* ARIZ. CONST. art. IV, pt. 2, §§ 6–7. Notably, Puente (sensibly) does not name any individual legislators as defendants, but it cannot scale this constitutional barricade by artful pleading. To the extent Puente contends that the "Arizona State Legislature" is some kind of proxy for, or alter ego of, particular subsets of individual legislators in their official capacities, then the same immunities must obtain. *Cf. Gregg v. Barrett*, 771 F.2d 539, 543 (D.C. Cir. 1985) ("The concerns that led to adoption of the Speech or Debate Clause deal not only with the independence of individuals legislators; those same concerns ordained an independent legislature, a Congress not subject to general oversight by either the

executive or judicial branches of government."). Conversely, if Puente maintains that the "Arizona State Legislature" is a jural entity independent of and distinct from its component members—which appears to be its position—then the Complaint contains no factual allegations that the *body* engaged in any actions or omissions approximating a violation of the OML.

Second, Puente would like a declaration that "all 'model bills' drafted and submitted to the Arizona Legislature for deliberations and vote be subject to the requirements of Arizona's Open Meeting Law." IR 1 at 15, ¶ B. But the Complaint does not—and could not—present even a single example of any bill introduced in *any* legislative session that the Legislature debated and/or voted on in proceedings that did not comply with the OML. And even assuming that the OML governs the Legislature and even if Puente could adduce evidence of a violation in connection with an identifiable legislative action, the statutory remedy is a finding that the action is void. *See* A.R.S. § 38-431.05(A). To the extent Puente seeks a declaration of the invalidity or unenforceability of some particular statute, however, then the proper defendant is the State or the executive officer or body charged with the statute's enforcement. *See generally Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 470, ¶ 36 (App. 2007) (holding in declaratory judgment context that "Plaintiffs must name as a defendant an entity or official that has the ability to control the implementation of" the relevant statute). The undersigned's research has located no case holding

that the Legislature of this state is a proper defendant in a civil action controverting the validity or enforceability of a state statute.

Third, Puente seeks a declaration that all ALEC materials presented at the Summit constitute "public records" that are subject to disclosure. IR 1 at 15, ¶ C. Putting aside that the Complaint never actually pleads the requisite elements of a claim under the Arizona Public Records Act, *see* A.R.S. § 39-121, *et seq.*, the Legislature, which cannot control or even ascertain the existence of ALEC's internal documents, could never effectuate such relief in any event. *See Bennett v. Napolitano*, 206 Ariz. 520, 525, ¶ 18 (2003) (explaining that to have standing, a plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief" (internal quotation omitted)).

Finally, Puente asks the court to fashion a prospective injunction of stunning breadth to prevent "a quora [*sic*] of the Legislative Committees from attending any future Summit of ALEC or similarly situated organizations without complying with" the OML. IR 1 at 16, ¶ D. Preliminarily, it bears emphasis that the "Arizona State Legislature"—the sole named defendant in this case—is an entity; it cannot "attend" any events, and it cannot control or monitor the elected representatives comprising it.

To the extent Puente wishes to restrict the activities of individual legislators, they are not parties to these proceedings (and would be immune from such an injunction in any event). More fundamentally, even putting aside the substantial ripeness questions that afflict this request and its noxious implications for First Amendment rights, such a capacious injunction would be an unprecedented judicial incursion into the sovereign affairs of a coequal branch. Article III of the state constitution secures the separation of powers that is the cornerstone of the constitutional edifice. Since the early days of statehood, the judiciary has recognized that "courts cannot interfere with the action of the legislative department." *State v. Osborn*, 16 Ariz. 247, 249 (1914); *see also City of Phoenix v. Superior Court of Maricopa County*, 65 Ariz. 139, 144 (1946) ("Courts have no power to enjoin legislative functions."); *Rubi v. 49'er Country Club Estates, Inc.*, 7 Ariz. App. 408, 418 (1968) ("The doctrine of separation of power renders conclusive upon us the legislative determination within its sphere of government."); *Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997) ("We have long held that Article III requires the judiciary to refrain from meddling in the workings of the legislative process."). Indeed, the nonjusticiability of the Plaintiffs' claims (*see supra* Section II) derives from the underlying constitutional principle that "[u]ntil the people, through their fundamental law, shall require the courts to supervise and direct the actions of the other departments in the process of making laws, we shall adhere to the theory of

government that those departments are responsible to the people . . . and not to the courts." *Allen v. State*, 14 Ariz. 458, 479 (1913).

B. Any Alleged "Meetings" Were Exempt from the OML as Political Caucuses

Even if a statute could displace the Legislature's constitutional authority, the "meeting" alleged by the Complaint would not trigger the OML's public notice and access mandates in any event. The OML categorically exempts from its terms "any political caucus of the legislature." A.R.S. § 38-431.08(A)(1). Although the term "political caucus" is undefined and it appears no Arizona court has had occasion to consider its contours, its "ordinary meaning . . . encompasses, within its terms, a meeting of members of a legislative body who belong to the same political party or faction to determine policy with regard to proposed legislative action." Ariz. Op. Atty Gen. No. I83-128 (R83-031), Nov. 17, 1983.

Here, all 26 legislators who the Complaint alleges attended the ALEC policy summit in December 2019 are members of the Republican caucus. *See* IR 1 at 10, 13. The OML's "political caucus" exemption is intended to forestall attempts (such as Puente's here) to weaponize the OML to encroach on political associations and trespass into their internal discussions. Private political organizations are constitutionally entitled to associational privacy, even if their membership includes elected officials and even if (indeed, *especially* if) their activities concern matters of public policy. Thus, because the ostensible "meeting" alleged by the Complaint

would constitute a "political caucus of the legislature," it was never subject to the provisions of the OML, and Puente's claims fail as a matter of law for this independent reason. *See State v. Christian*, 205 Ariz. 64, 66, ¶ 6 (2003) ("When the plain text of a statute is clear and unambiguous there is no need to resort to other methods of statutory interpretation to determine the legislature's intent because its intent is readily discernable from the face of the statute.").

In fact, it appears Puente has conceded the essential facts on this point. They have acknowledged in writing that the ALEC meetings at issue constituted caucus meetings. *See* Op. Br. at 3 (discussing "secret caucus meetings such as those that take place at the ALEC Summit"). That concession alone is sufficient to affirm the judgment of the trial court.

IV. Puente's Interpretation of the OML Would Raise Serious Separation of Powers Concerns

As set forth above, the controlling force of the OML's plain text and entrenched principles of nonjusticiability supply ample grounds for affirming the trial court's ruling. That said, it is worth pausing to apprehend the institutional distortions and practical hazards embedded in Puente's conception of the OML. Holding that *any* gathering—whether on the Capitol lawn or at a conference, a fundraiser, a social event, or even at a coffee shop—of *any* permutation of legislators who may constitute a quorum of *any* committee would paralyze the effective functioning of the Legislature. The formulation of policy ideas and the negotiation

of legislative solutions depend on flexible, spontaneous and *ad hoc* communications among legislators. If all such gatherings were "meetings" governed by the OML, the practical ability of elected representatives to develop relationships with their colleagues and build legislative coalitions would be severely corroded, at the expense of efficient and effective governance.

Further, a ruling in Puente's favor promises an inevitable deluge of OML litigation that would enlist the courts in a chronic micromanagement of the Legislature's internal affairs and individual legislators' daily activities. Not only would such an arrangement be impracticable, it would precipitate at least two serious constitutional quandaries. First, as discussed above, courts are constitutionally precluded from interposing themselves into any facet of the legislative process. *See generally League of Arizona Cities & Towns v. Brewer*, 213 Ariz. 557, 559, ¶ 10 (2006) ("Before a bill passes, the courts generally may not interfere with the legislative process."). Thus, even if a court were persuaded that an upcoming private gathering of a group of legislators might constitute a "meeting," any attempt to enjoin the gathering or dictate the manner in which it is conducted would transgress the outer perimeter of the judicial power.

Second, both legislative institutions and their individual members possess a "legislative privilege" that "is rooted in both federal common law and the Arizona Constitution." *Arizona Indep. Redistricting Comm'n v. Fields*, 206 Ariz. 130, 137,

¶ 16 (App. 2003); *Mesnard*, --- P.3d ---, 2021 WL 2707549 ¶¶ 12-13. Importantly, the legislative privilege insulates confidential communications among legislators (and even between legislators and third parties) "about legislation or legislative strategy." *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 670 (D. Ariz. 2016) (holding that Puente was not entitled to obtain legislator's official emails and other documents). A ruling for Puente would effectively nullify such confidentiality protections for many intra-house gatherings and communications, and thereby place the OML (and, by extension, the judiciary) on a collision course with a constitutionally secured privilege.

While the Court need not rely on such considerations to affirm the ruling below, they underscore the wisdom of the trial court's refusal to entangle the judiciary in matters that exceed its constitutional authority and institutional competence.

CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's dismissal of this action in its entirety and with prejudice, pursuant to Arizona Rule of Civil Procedure 12(b)(6).

RESPECTFULLY SUBMITTED this 7th day of July, 2021.

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