

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

HONORABLE DEWAIN D. FOX

CLERK OF THE COURT  
A. Walker  
Deputy

GLENDALE ELEMENTARY SCHOOL  
DISTRICT, et al.

MARY R O'GRADY

v.

STATE OF ARIZONA, et al.

JOSEPH CADA

COLIN PATRICK AHLER  
LOUIS FRANK CAPUTO III  
JEFFERSON R DALTON  
GIDEON ESAKOFF  
ARIZONA SCHOOL FACILITIES  
BOARD  
100 N 15TH AVE STE 302  
PHOENIX AZ 85007  
BRETT W JOHNSON  
WILLIAM A RICHARDS  
JESSE R RITCHEY  
JUDGE FOX

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

This lawsuit challenges the constitutionality of Arizona's system for funding the capital needs of Arizona's K-12 public schools. Importantly, Arizona's Constitution vests Arizona's legislature with the power and responsibility to "enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include: 1. Kindergarten schools[;] 2. Common schools[; and] 3. High schools. . . ." Ariz. Const. art. XI, § 1(A). As such, subject to the constitutional minimums established by Arizona's appellate

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

courts (which are discussed below), it is the legislature that makes policy decisions on how best to allocate the state's limited resources to meet the public schools' capital and other needs.

This Court's role is narrow. The Court does not have the right or power to second-guess or replace with its own the legislature's policy judgments on how best to fund public education. The Court's limited role here is to determine whether the legislature's policy decisions on funding the public schools' capital needs satisfy the constitutional minimums required under the tests established by Arizona's appellate courts.

To make its determination, after extensive discovery taken by the parties over several years, the Court conducted a 14-day bench trial between May 28, 2024, and June 25, 2024. Following the trial (and several extensions stipulated by the parties), the parties submitted extensive written closing arguments and proposed findings of fact and conclusions of law. The record consists of: (i) 3,216 pages of trial transcripts; (ii) nearly 2,000 admitted exhibits totaling 42,699 pages; (iii) thousands of pages of deposition transcripts; and (iv) the parties' proposed findings of fact and conclusions of law totaling a combined 589 pages. After carefully and thoroughly reviewing the record and considering the parties' arguments, the Court concludes that the current public-school capital finance system does not meet the constitutional minimum standards established by the Arizona Supreme Court.<sup>1</sup>

**The Parties**

1. Plaintiffs consist of four school districts, a taxpayer, and three statewide organizations representing Arizona's school districts, educators, and administrators.

2. The plaintiff school districts include Elfrida Elementary School District ("Elfrida"), a small rural school district in southeastern Arizona with approximately 124 students; Chino Valley Unified School District ("Chino Valley"), a district with four schools and approximately 2,250 students; Crane Elementary School District ("Crane"), a district in Yuma with approximately 5,900 students; and Glendale Elementary School District ("GESD"), a district with 12 schools and an online program serving approximately 9,000 students.

3. The plaintiff organizations include the Arizona School Boards Association, the Arizona Education Association, and the Arizona School Administrators.

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<sup>1</sup> It is important to note that, although the legislature passed and the Governor signed the budget for the 2025-26 fiscal year before the date of this ruling, the trial was completed before the budget was adopted. The record does not include the educational funding provided in the final 2025-26 budget, and that information was not considered by the Court in making this ruling.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

4. The plaintiff taxpayer is Kathy Knecht, who owns property in the Peoria Unified School District (“PUSD”) and previously served on the PUSD board.

5. The Defendant is the State of Arizona (the “State”). The State’s role in this litigation has been minimal. Instead, it is primarily the Special Intervenors who have defended against Plaintiffs’ claims. The Special Intervenors include the Speaker of the Arizona House of Representatives (the “Speaker”) and the President of the Arizona State Senate (the “President”).<sup>2</sup>

**Legislative History and Students FIRST**

6. In 1998, the legislature enacted the final version of the public-school finance system known as “Students FIRST.” (*See* Students FIRST Act of 1998, Laws 1998, ch. 1, § 44 (originally codified at A.R.S. §§ 15-2002, 2011; recently recodified at A.R.S. §§ 41-5702, 5711)).

7. The Students FIRST school capital finance system was based on the general premise that the State would provide full funding to ensure that all educational facilities in school districts meet state standards and to provide new facilities needed due to enrollment growth. It allowed school districts, within limits, to expend local monies to exceed state standards or to provide for capital needs not included in the state standards. (Pl. Exh. 225 at 4).<sup>3</sup>

8. The Students FIRST Act created the School Facilities Board (the “SFB”) to administer the finance system. (Pl. Exh. 225 at 4).

9. The legislature tasked the SFB with adopting school facility minimum adequacy guidelines (the “MAG”) to supplement the school building adequacy standards specified by law. In this regard, former A.R.S. § 15-2011(F), which is now renumbered as A.R.S. § 41-5711(F), provides:

The board shall adopt rules establishing minimum school facility adequacy guidelines. The guidelines shall provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards pursuant to § 15-203, subsection A,

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<sup>2</sup> The individuals serving as the Speaker and the President have changed several times over the course of this action, which has been pending since 2017. As such, the Court refers to the Special Intervenors by their titles, rather than by their names.

<sup>3</sup> The cited page numbers for trial exhibits refer to the page numbers assigned and printed at the top of each exhibit by Case Center, the Court’s digital evidence platform. These page numbers often differ from the page numbers placed on the documents when they were created.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

paragraphs 12 and 13 and §§ 15-701 and 15-701.01. At a minimum, the board shall address all of the following in developing these guidelines:

1. School sites.
2. Classrooms.
3. Libraries and media centers, or both.
4. Cafeterias.
5. Auditoriums, multipurpose rooms or other multiuse space.
6. Technology.
7. Transportation.
8. Facilities for science, arts and physical education.
9. Other facilities and equipment that are necessary and appropriate to achieve the academic standards prescribed pursuant to § 15-203, subsection A, paragraphs 12 and 13 and §§ 15-701 and 15-701.01.
10. Appropriate combinations of facilities or uses listed in this section.

10. The SFB consulted the State's K-12 academic standards in developing the MAG. The current MAG reflected the academic standards in effect when the MAG were adopted. (Pl. Exh. 225 at 5).

11. In 2006, the SFB reviewed multiple publications that identify common design elements in high performing schools. The SFB's 2005-06 Annual Report presents a series of design elements that have shown academic impacts with specific design recommendations and shows how the MAG address each of the design elements. The design elements include Acoustical Comfort, Thermal Comfort, Visual Comfort, Day Lighting, Indoor Air Quality, and Playground Equipment/Surfaces. (Pl. Exh. 52 at 8; Trial Tr. 6/11/2024 at 104:3-111:3).

12. In its 2005-06 Annual Report, the SFB indicated that "[s]ubstantial research has demonstrated that the built environment has a direct impact on student and teacher performance." (Pl. Exh. 52 at 13). The Report also indicated that Acoustic Comfort is important because "[n]oise from both inside and outside the classroom may hamper a student's ability to listen to teacher instruction and concentrate on learning tasks." (*Id.*).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

13. The MAG adopted by the SFB include the acceptable range standards for air quality (including carbon dioxide), temperature, and decibel levels. All these standards are for the purpose of supporting student achievement. (Rushin Depo. Tr. 2/21/2019 at 36:11-37:12).

14. The MAG require that building systems be in good working order and buildings be structurally sound and watertight. (Trial Tr. 5/28/2024 at 27:21-29:8; *see also* A.R.S. § 41-5711).

15. The project categories covered by the MAG include HVAC, roofing, electrical, plumbing, surfaces, special systems, and special equipment. (Pl. Exh. 863 at 2; *see also* A.R.S. § 41-5711(B)(3)).

16. In 2020, the SFB recognized that since adoption of the MAG in 2001, they “have become inconsistent with current industry standards and [SFB] practice, technological changes, and best practices regarding education.” (Notices of Final Expedited Rulemaking, 2020 AZ REG TEXT 528215 (NS), 26 A.A.R. 2963). As such, the SFB updated the MAG through expedited rulemaking to address these issues effective November 3, 2020. (*Id.*). But the MAG have not been substantially updated since 2002. (Pl. Exh. 225 at 5).

17. The Students FIRST Act created three new funding programs for Deficiency Corrections, Building Renewal, and New School Facilities. (Pl. Exh. 225 at 6).

18. The Deficiency Corrections Fund was created to bring deficient facilities up to standard in the first few years after the enactment of Students FIRST. In this regard, the SFB was required to review and award monies to correct all deficiencies by June 30, 2001, and with a few exceptions, all deficiencies were to be corrected by June 30, 2004. After the SFB adopted the MAG in September 1999, the total cost of bringing all schools up to standard was estimated to be approximately \$1.2 billion. The legislature provided all funding required for this program, and the Deficiency Corrections Fund has been repealed. (Pl. Exh. 225 at 6).

19. In 2001, the Deficiency Corrections program was replaced by the Emergency Deficiencies Correction grant program. This program was funded with excess monies transferred from the New Facilities Fund. The deficiencies eligible for funding through this program are narrower than those previously eligible for funding through the Deficiency Corrections Fund. The Emergency Deficiencies Corrections program is the only source of SFB funding for repairs to non-instructional facilities. (Pl. Exh. 225 at 7).

20. The Building Renewal formula program was established in 1998 based on the national Sherman-Dergis model to provide funding for school districts to maintain school facilities and to prevent them from falling below the MAG. Districts received funding based on a formula

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

that considered the building's age and student capacity and the cost of prior building upgrades or remodeling. The formula included a 5% rural adjustment. The legislature fully funded the Building Renewal formula program only once and made substantial reductions in fiscal years 2002 and 2003 to balance the state budget. The legislature provided no Building Renewal formula funding for fiscal years 2004 and 2009 through 2013. In 2013, the legislature repealed the Building Renewal program. (Pl. Exh. 225 at 7; Swenson Depo. Tr. 10/30/2019 at 69:18-21).

21. In 2008, the legislature created the Building Renewal Grant program. The projects eligible for funding through the grant program are more limited than the projects that could be funded by the original formula program. For instance, the grant program provides no funding for preventative maintenance and is limited to academic buildings. The grant program also is limited to projects that already are below the MAG. Annual legislative appropriations for the Building Renewal Grant program have ranged from a low of \$2,667,900 to a high of \$79,458,800 in fiscal year 2020. By comparison, the SFB's deputy finance director indicated that the old formula would have resulted in approximately \$289 million of funding for school repairs and replacements in fiscal year 2017. (Pl. Exh. 225 at 8).

22. The New School Facilities program provided funding to build adequate schools in time to avoid overcrowding. Districts received funding through this program according to a statutory formula based on student enrollment growth. The formula was forward looking--two years for elementary schools, and three years for middle or high schools--to ensure completion of new schools before overcrowding occurred. The statute included a 5% increase for rural districts and an annual adjustment based on the construction cost index. For fiscal years 2011 through 2013, the legislature prohibited the SFB from funding any new projects for additional space. In 2013, the legislature also modified the forward-looking aspect of the formula by requiring a district to be over its capacity in the current year to qualify for funding for the following year. Although the legislature restored the forward-looking aspect of the formula in 2019, the modification applied the two-year projection period (instead of the former three-year projection period) to middle and high schools. (Pl. Exh. 225 at 8-9).

23. The Students FIRST Act also provided funding for school districts' "soft capital" needs, which include items such as buses, furniture, curriculum materials, and technology. The Act increased the prior "Capital Levy" by \$50 per pupil and renamed it "Soft Capital," which had to be used first for classroom equipment to meet the MAG and secondarily for other equipment needs. For fiscal years 2009 to 2013, the annual legislative appropriations for Soft Capital were between \$21 million and \$158 million below the statutory formula amount. To mitigate against the budget reductions, the legislature also allowed Soft Capital funding to be used for maintenance and operations ("M&O"), rather than only for short-term capital items. In 2012, the legislature amended A.R.S. § 15-962 to make this change permanent. (Pl. Exh. 225 at 9-10).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

24. Beginning in 2014, the legislature combined Soft Capital funding with the Capital Outlay Revenue Limit--another formula-based source of funding that could be used for M&O or capital needs--and renamed the combined funds “District Additional Assistance” (“DAA”). For fiscal year 2014, the DAA funding was reduced by \$238,985,500, the same amount the two programs combined into DAA had been reduced the prior year. By fiscal year 2018, the annual reduction in DAA funding was \$352,442,700. (Pl. Exh. 225 at 10).

25. In 2018, the legislature began phasing out the DAA annual reductions beginning with fiscal year 2019, so that by fiscal year 2023, the DAA funding would be restored to the original statutory amount. But the DAA statutory amount has not been adjusted for inflation since 1998. Based on the total of 56.9% of inflation that occurred between 1998 and 2019, as measured by the Consumer Price Index, the fully funded statutory amount of DAA in 2019 is worth 64% of what it was worth in 1998. To adjust for inflation and to provide equivalent value as the funding in 1998, the amount appropriated for DAA in fiscal year 2020 would have to be about \$700 million. The Joint Legislative Budget Committee Appropriations Report for fiscal year 2020 estimated DAA funding to be \$307,463,700. (Pl. Exh. 225 at 10).

26. An important component of Students FIRST was the requirement that the State inspect every school every five years. In this regard, A.R.S. § 41-5702(A)(3), formerly A.R.S. § 15-2002, imposes upon the State the obligation to “[i]nspect, contract with a third party to inspect or certify school district self-inspections of school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in § 41-5711, the accuracy of the reporting of vacant and partially used buildings pursuant to this subsection and routine preventive maintenance guidelines as prescribed in this section with respect to constructing new buildings and maintaining existing buildings.” The statute also requires the State to “randomly select twenty school districts every thirty months and provide for them to be inspected pursuant to this paragraph.” These inspections were required to assure compliance with the MAG. (Trial Tr. 5/30/2024 at 15:11-24; Pl. Exh. 17 at 1; Pl. Exh. 4 at 2).

**Effects of the Repeal and Modification of Students FIRST and Funding Delays**

27. As set forth above, the legislature has repealed or substantially modified components of Students FIRST since it originally was enacted in 1998.

28. Plaintiffs called Dr. Judy Richardson (“Richardson”) to provide expert opinion testimony regarding Arizona school finance. Richardson has extensive experience in Arizona drafting laws relating to school finance, including the creation and implementation of Students FIRST. In fact, she helped the Attorney General to defend the State in prior challenges to Arizona’s system of school finance. But in this case, Richardson testified for Plaintiffs as to how the system has evolved since the enactment of Students FIRST. (Trial Tr. 5/30/2024 at 8:3-10:10).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

29. Richardson described “a high-level overview” of her opinions as follows:

Basically, the State, unfortunately, does not provide sufficient funding now to ensure that all school districts can meet the minimum guidelines, and that is significant because the minimum guidelines were developed in consultation with the student academic achievement requirements, and so to the extent that the State does not provide the minimum guidelines, it also does not provide adequate support for the student academic achievement.

And the State admits that the guidelines are, itself, out of date. And unfortunately, the system also requires tremendous reliance on bonds and overrides, which is local funding, which itself creates disparity in the system.

(Trial Tr. 5/30/2024 at 11:18-12:10).

30. Richardson’s opinion testimony is supported by the testimony of SFB board members. Thomas Rushin, who joined the SFB in 2006 and was its longest serving board member as well as its former vice chair and interim chair, agreed in 2019 “that currently the State does not provide funding that ensures that no district falls below the minimum adequate facility standards.” Similarly, Scott Thompson, an SFB board member and Mesa Public Schools’ assistant superintendent of business and support services, agreed: (i) “with the elimination of the building renewal formula and the cuts to DAA that the existing capital system is inadequate to ensure that no district falls below the minimum guidelines”; and (ii) “the State funding isn’t sufficient to enable districts to prevent their facilities from falling below minimum guidelines at this point.” (Ruffin Depo. Tr. 2/21/2019 at 39:21-40:5, 136:10-14; Thompson Depo. Tr. 3/20/2019 at 11:13-15, 86:5-11, 101:18-20, 112:21-113:3).

31. The SFB’s own 2014 Annual Report addressed the massive shortfall in funding to the Building Renewal program: “Created in FY 1999, Building Renewal funding was distributed to school districts to help them maintain their existing facilities. Distributions were based on a formula that considered the size and age of the existing space. Over the lifetime of the fund, the formula amounted to approximately \$2.8 billion, while appropriations totaled \$647.5 million, or 23.5% of the formula.” (Pl. Exh. 408 at 23).

32. After the change in Building Renewal funding from the formula-based approach to the grant approach, many districts must rely on local funding (*i.e.*, a bond election) to meet the MAG. Local funding is not a reliable alternative to formula-based Building Renewal funding because local funding depends on the voters’ willingness to approve a bond election. Moreover, the grant approach to Building Renewal funding is slower and more cumbersome than the formula-



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

based approach because each individual project requires SFB approval at the assessment, design, and construction phases. The approval process adds significant delay to the correction of deficiencies with facilities that already are below the MAG. In addition, as set forth above, the grant program provides no funding for preventative maintenance and is limited to academic buildings. (Pl. Exh. 225 at 11-13).

33. The Building Renewal grant program routinely lacks funding to complete approved projects, resulting in the deferral of projects to remedy existing deficiencies. For instance, fiscal year 2023 ended with more than \$115 million in deferred projects for facilities below the MAG. As a result, several projects were deferred to fiscal year 2024 with the hope (but not the promise) that sufficient funding would be available then. Indeed, more than \$83 million of roofing and weatherization projects were deferred to the next fiscal year at the earliest. (Pl. Exh. 780 at 4-5).

34. On March 12, 2024, the School Facilities Division (“SFD”)<sup>4</sup> sent the following email to school districts:

The following is an update on the status of funding and application processes for the Building Renewal Grant Fund (BRG). At this time, the BRG fund does not have sufficient funding for ALL project requests. Through June 30, 2024, the School Facilities Division (SFD) will only award applications with an eligible and urgent fire/life and safety, Minimum Adequacy Guideline deficiency.

Your district MAY continue to submit BRG applications for all eligible deficiencies through the School Facilities Portal (Portal). Those applications will be reviewed by the SFD staff and remain in the Portal system. At the point when we have sufficient appropriated funding, we will revisit the status of those deficiencies and proposed projects.

Districts with roofing and weatherization projects included in our pilot prioritization process will receive a personalized email from your School Facilities Liaisons on how to prepare your project request for the next round of Roofing and Weatherization Construction Phase Grant funding -- currently being planned for September 2024. Additional applications submitted after 11/15/2023 for roofing and weatherization construction projects that do not qualify as fire/life and safety or construction lite will be

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<sup>4</sup> Effective September 29, 2021, the SFB’s responsibilities were transferred to the newly established SFD and the School Facilities Oversight Board (“SFOB”) within the Arizona Department of Administration (the “ADOA”). (Trial Tr. 5/28/2024 at 77:6-12; Pl. Exh. 525 at 4).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

considered alongside other pending applications for award in September 2024 -- dependent upon the level of appropriation to the BRG fund. For general information on the BRG Prioritization, please reference our FAQ.

(Pl. Exh. 780 at 5).

35. In planning for the fiscal year 2025 budget, the SFD estimated the amount needed to fully fund the Building Renewal grant program is over \$587 million. Notwithstanding that estimate, the ADOA's request submitted to the Governor was for Building Renewal grant funding of less than \$222 million, and the Governor's budget proposal provided for Building Renewal grant funding of less than \$200 million. (Pl. Exh. 780 at 5-6).

36. As set forth above, between 1999 and 2005, a significant amount of work was done through the Deficiencies Correction program to correct existing deficiencies in Arizona's public schools. These projects now are at least 20 years old. Because systems' life cycles are between 15 and 20 years, these projects have reached their "critical point." (Trial Tr. 6/13/2024 at 143:3-7; Kennon Depo. Tr. 2/14/2019 at 18:16-19:5).

37. The number of requests for Building Renewal grant funding has been growing year by year. Indeed, the SFD is receiving more applications for Building Renewal grant funding today than it ever has. (Trial Tr. 6/13/2024 at 47:16-17, 142:25-143:2, 143:23-144:13).

38. The Building Renewal grant program historically has run out of funding since its inception. In this regard:

- a. The October 2009 SFB meeting minutes reflect that the SFB already had received requests in excess of available funding and "there's triage having to happen." (Rushin Depo. Tr. 2/21/2019 at 76:2-23).
- b. In April 2011, the SFB recognized that "we will have to continue to struggle with needs that are much greater than our available resources which will continue to impede SFB's ability to maintain the Minimum Guidelines for K-12 facilities as established by the State Legislature." (Pl. Exh. 140 at 1).
- c. The May 2011 SFB meeting minutes reflect that the Building Renewal grant program was "running short on money" and the balance of available funds was only \$4,591." SFB staff recommendations for approval of projects at the June 2011 meeting was "contingent upon the transfer of the entire fiscal year appropriation into the fund." (Rushin Depo. Tr. 2/21/2019 at 77:2-14, 78:11-79:17).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- d. The July 2012 SFB meeting minutes reflect that “many districts dismiss coming to the SFB because they do not think the Board has any available funding.” (Rushin Depo. Tr. 2/21/2019 at 83:8-21).
- e. The June 2013 SFB meeting minutes reflect that, if the SFB approved recommended projects, the Building Renewal grant program’s remaining balance would be less than \$76,000. At that time, the total amount of requests pending approval exceeded \$16 million. (Rushin Depo. Tr. 2/21/2019 at 94:2-12; *see also* Pl. Exh. 118).
- f. Later in June 2013, when the SFB was anticipating a Building Renewal appropriation of \$14 million for the new fiscal year beginning on July 1, 2013, the SFB already was preparing for the fund to be depleted immediately, necessitating a supplemental appropriation. (Rushin Depo. Tr. 2/21/2019 at 95:17-97:4).
- g. For 2014, the legislature appropriated only \$16 million for the capital needs of the public schools statewide. (Trial Tr. 5/28/2024 at 35:25-36:9).
- h. The November 2015 SFB meeting minutes reflect that the SFB was prioritizing Building Renewal grant projects because “the SFB is running out of money.” (Rushin Depo. Tr. 2/21/2019 at 116:10-117:6).
- i. The December 2017 SFB meeting minutes reflect that, with six months of the fiscal year remaining, the SFB approved a hold on roofing and weatherization projects at the construction phase due to the limited amount of uncommitted Building Renewal funds remaining. At that time, the SFB had only \$3.5 million of Building Renewal funds left for the remaining six months of the fiscal year and was looking to “identify opportunities to nourish the fund through the end of June 2018.” (Rushin Depo. Tr. 2/21/2019 at 119:7-22; Pl. Exh. 71 at 2; Pl. Exh. 171).
- j. By April 2018, the approved projects exceeded the available Building Renewal funds. (Pl. Exh. 78 at 2).
- k. By June 6, 2018, nearly the end of the fiscal year, the Building Renewal fund balance was down to \$521,762 following the awards approved that day. Notably, the awards approved on June 6, 2018, and the remaining fund balance

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

did not include another \$11,580,960 of projects recommended for approval but to be applied to the fiscal year 2019 appropriation. (Pl. Exh. 50).

- l. The December 2018 SFB meeting minutes reflect that the SFB adopted a policy to fund non-critical projects through design and bidding only (*i.e.*, not construction) in an attempt to prioritize due to lack of funding. (Pl. Exh. 72 at 2; Rushin Depo. Tr. 2/21/2019 at 123:6-125:3).
- m. The January 2019 and February 2019 SFB meeting minutes reflect that the SFB deferred “critical” projects for schools in the Casa Grande Elementary, Nogales, Beaver Creek, Glendale Elementary, Tucson Unified, and Flowing Wells School Districts due to lack of funding. (Rushin Depo. Tr. 2/21/2019 at 125:8-127:4).
- n. As of April 4, 2022, the Building Renewal grant program fund balance was only \$416,541. In May 2022, more than \$30 million of Building Renewal grants were approved by the SFD pending funding. By June 2022, the amount of grants approved pending funding had grown to more than \$40 million. The projects that were approved pending funding were for facilities with existing MAG deficiencies. (Pl. Exh. 430; Pl. Exh. 284 at 2; Pl. Exh. 594; Webster-Adams Depo. Tr. 10/28/2022 at 55:9-56:3).
- o. As of June 8, 2023, the SFD had unobligated Building Renewal grant funds of \$11.1 million, which the SFD was preparing to award that month for “projects that qualify as ‘critical’ based on fire, life and safety compliance.” At the same time, the SFD had pending 255 applications for projects totaling \$132 million, which had been substantially reviewed and were awaiting funding. These projects were “needed to resolve known deficiencies and bring the facilities back into compliance with minimum adequacy guidelines, but [were] not considered critical in terms of fire, life and safety compliance.” Moreover, the SFD “anticipate[d] the majority of the FY2024 appropriation of \$200M could be obligated on FY2023 eligible projects.” (Pl. Exh. 864 at 2).
- p. Every year between 2019 and 2022, the SFD ran out of money to fund projects to correct MAG deficiencies and had to resort to conditionally approving projects pending a supplemental appropriation from the legislature. (Morrison Depo. Tr. 11/2/2022 at 77:18-78:14).

39. The SFD requested approximately \$350 million of funding for the Building Renewal grant program in the fiscal year 2024 budget based on projections that took into account

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

known MAG deficiencies. The SFD's Building Renewal grant program project manager described the projections as "pretty spot on" based on prior years' experience. Governor Ducey requested \$348.88 million for the program in his proposed budget. But the legislature appropriated only \$200 million for the Building Renewal grant program in fiscal year 2024. (Trial Tr. 6/13/2024 at 134:20-135:12, 138:7-10; Trial Tr. 6/11/2024 at 119:25-122:3; Def. Exh. 886 at 3; Trial Tr. 6/24/2024 at 63:23-64:2).<sup>5</sup>

40. By September 2023, which was only a couple of months into fiscal year 2024, the SFD knew that it had inadequate funds for the Building Renewal grant program. Due to the funding shortfall, the SFD instituted a prioritization project to defer roofing and weatherization projects. This included 20 roofing and weatherization projects totaling \$52.3 million that originally were deferred from fiscal year 2023, were deferred again in fiscal year 2024, and will be considered in fiscal year 2025. (Trial Tr. 6/25/2024 at 88:9-89:5; Pl. Exh. 865; Trial Tr. 6/13/2024 at 105:19-106:24; Pl. Exh. 863 at 2).

41. Of the 40 projects placed into the prioritization project, only nine were funded and the remaining 31 were deferred. Deferred projects go through the prioritization process again in subsequent years without any guarantee of being funded. As a result of deferrals, bids sometimes expire, and the SFD must ask districts to submit a new application. (Pl. Exh. 872; Trial Tr. 6/13/2024 at 107:11-22; Trial Tr. 5/30/2024 at 30:6-19; Tyler Depo. Tr. 2/9/2024 at 44:5-46:3).

42. On June 24, 2024, the SFD's assistant director testified that the Building Renewal grant program was out of funds from the fiscal year 2024 appropriation "except for a small amount reserved for urgent life-safety projects," and that had "been the case for quite some time" in 2024. As a result, all projects have been escalated to the assistant director for review. Indeed, as of mid-June 2024, the whole Building Renewal grant fund was down to about \$1 million, and the SFD was "trying to coast along as much as [it] can to the 30<sup>th</sup> of June" -- the fiscal year end. (Trial Tr. 6/24/2024 at 60:7-18; Trial Tr. 6/12/2024 at 67:16-68:4).

43. As of February 15, 2024, 65 Building Renewal grant applications, totaling over \$130 million, were escalated or pending funding. A project listed as "pending funding" is an escalated project that has been reviewed by the SFD's assistant director and is awaiting funding. The list has grown since February 15, 2024. (Trial Tr. 6/13/2024 at 100:25-101:16, 108:6-109:20, 112:4-6; Pl. Exh. 875).

44. The number of Building Renewal projects awaiting funding continues to grow. As of May 3, 2024, the SFD had \$173.7 million in Building Renewal grant projects on hold for

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<sup>5</sup> References to "Def. Exh." are to trial exhibits marked by the Defendant and/or the Special Intervenor.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

funding. By May 28, 2024, that number increased to 325 projects totaling \$194 million. By June 13, 2024, the number increased further to 396 projects totaling \$221 million. At that time, the Building Renewal fund balance was only \$540,000. On June 24, 2024, the SFD had 435 Building Renewal projects totaling \$227.3 million awaiting funding. Each project pending funding is for a facility with an existing MAG deficiency. (Campbell Depo. Tr. 5/3/2024 at 55:19-56:2; Trial Tr. 6/24/2024 at 62:22-63:18; Trial Tr. 6/13/2024 at 101:17-102:7, 105:13-18).

45. The deferred projects at the time of trial in June 2024--which totaled \$227.3 million as of June 24, 2024--already exceeded the entire \$200 million Building Renewal appropriation for fiscal year 2025. (Trial Tr. 6/24/2024 at 63:23-64:5).

46. On June 28, 2023, the SFD reported that it saved \$2.2 million in Building Renewal grant funds since July 2022, which created more funding available for eligible projects, by reviewing the scope of work to ensure that deficiencies are being corrected in the most cost-effective way and to avoid costs unrelated to correcting MAG deficiencies. (Pl. Exh. 864 at 3).

47. The chronic lack of Building Renewal grant funding for eligible projects (*i.e.*, to correct existing MAG deficiencies) has been extremely frustrating for SFD board members and staff as well as for the school districts they serve. (Trial Tr. 6/12/2024 at 47:13-22; Rushin Depo. Tr. 2/21/2019 at 84:23-85:10; Thompson Depo. Tr. 3/20/2019 at 74:1-17, 85:3-15; McCarthy Depo. Tr. 2/28/2019 at 109:12-111:12; Norris Depo. Tr. 2/19/2019 at 97:10-14).

48. The lack of Building Renewal grant funding led the SFD to advise districts to hold off on bidding or submitting grant applications for eligible projects for MAG deficient buildings. As a result, some districts have been dissuaded from submitting Building Renewal grant applications. (Morrison Depo. Tr. 11/2/2022 at 96:16-100:6; Trial Tr. 5/29/2024 at 119:21-120:15, 230:9-21; Weeks Depo. Tr. 4/10/2019 at 114:8-115:1; Monreal Depo. Tr. 2/14/2019 at 12:3-13:3).

49. Delays in completing Building Renewal projects cause secondary damage, particularly with larger projects such as roofs. As the SFB itself recognized: "The cost of repairing or replacing a failed or failing building system can be reduced significantly by altering the timing of the correction. If the SFB is resourced to predict failures, additional costs attributed to emergency response and hidden secondary damages could be averted." Examples of secondary damage resulting from leaky roofs include wet insulation, rusted structural metal decks, water-stained ceilings, and exposed mold and asbestos. (Bakalis Depo. Tr. 10/4/2018 at 73:21-74:5; Pl. Exh. 9 at 37 (emphasis in original); Thompson Depo. Tr. 3/20/2019 at 78:7-79:7; Trial Tr. 6/5/2024 at 177:14-178:11, 183:4-16).

50. Delays in completing Building Renewal projects also result in district maintenance staff having to do patchwork repairs, which diverts them from working on other critical projects

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

and completing preventative maintenance on other facilities. (Trial Tr. 6/5/2024 at 177:14-178:11).

51. Delays in completing Building Renewal weatherization and roofing projects--which delays sometimes last for years--can expose districts to liability. For example, the Amphitheater School District had to wait from 2015 to 2024 to get a roof replaced and to complete the weatherization of a high school building. As a result, the building ended up with mold, and the district is a defendant in an ongoing class-action lawsuit for exposure to the mold. (Trial Tr. 5/30/2024 at 29:14-30:5; Pl. Exh. 9 at 37; Pl. Exh. 780 at 6).

52. Delays in completing Building Renewal roofing projects, for example, also can lead to poor learning environments. Indeed, the Special Intervenors' expert acknowledged that "your leaking roof I would expect to be tied to student performance, because students don't do well when the roof is leaking." (Trial Tr. 6/12/2024 at 166:23-167:22).

53. Delays in completing Building Renewal projects also expose districts to increased project costs due to inflation, particularly if the project must be rebid. The delays also create project planning challenges for the districts. (Trial Tr. 6/5/2024 at 175:23-176:9, 183:17-184:11).

54. Funding delays for Building Renewal projects to correct existing MAG deficiencies create a dilemma for districts because they cannot use their own local funding to complete projects and then seek reimbursement from the SFD when funding becomes available. In this regard, the Building Renewal Grant Fund Policy provides: "District expenditures for investigations or deficiency corrections completed prior to the application approval, unless the Division had pre-authorized the school district to proceed in writing, are not eligible for reimbursement." Although the policy contemplates the possibility of pre-authorized expenditures, the SFD as a matter of course does not pre-authorize expenditures for future reimbursement, and districts forfeit any Building Renewal grant funding if they proceed with projects using local funds, such as bond funds. (Bakalis Depo. Tr. 2/27/2019 at 142:6-143:13; Pl. Exh. 722 at 1; Tyler Depo. Tr. 2/9/2024 at 38:5-11; Pl. Exh. 876; Trial Tr. 6/13/2024 at 129:4-130:22).

55. The following are specific examples of the effects of insufficient Building Renewal grant funding:

- a. Crane applied for Building Renewal funding to repair floors at Valley Horizon Elementary School and Crane Middle School that "were beginning to bubble" due to moisture between the slab and vinyl tile. Crane was told that the floors were not eligible for funding because they "had not failed because it wasn't a tripping hazard." Crane used bond funds to repair the floors to prevent them

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

from becoming a safety hazard and to avoid potential liability for injuries to students. (Trial Tr. 5/28/2024 at 64:22-66:3).

- b. In 2021, Crane sought to leverage \$1.75 million in Covid-related ESSER funding earmarked for the replacement of aging HVAC units at its schools by proposing to the SFD a proactive plan to replace 261 HVAC units that had exceeded their useful life. The total cost to replace all 261 units was estimated to be \$3.75 million. To avoid supply chain challenges and the disruption caused by replacing each unit as it failed, Crane proposed to combine its ESSER funding with \$2 million to be provided by the SFD to replace all units at one time before the hot summer months further strained the units. Although the SFD indicated the proposal was a good idea, the SFD did not have the Building Renewal funding available to approve the plan. (Trial Tr. 5/28/2024 at 105:17-108:23; Pl. Exh. 681).
- c. The Balsz School District (“Balsz”) applied for Building Renewal funding for an air handler project at Griffith Elementary School. Although the project was approved, the approval was subject to funding being available. The SFB ran out of Building Renewal funds and could not provide the district with funding for the project until the legislature approved supplemental funding. Other projects were funded ahead of the air handler project, which was considered a “critical” project, because “other [SFB] liaisons are louder” than the liaison assigned to Balsz. Due to the construction delays, the SFB had to pay to move and store the air handlers at different locations. (Vassar Depo. Tr. 12/19/2019 at 136:20-140:23).
- d. Phoenix Elementary School District (“PESD”) has been unable to obtain Building Renewal funding to replace building components, such as chillers that are important to good climate control, at the end of the components’ useful lives before there is a demonstrated failure of the component. In an effort to be a good steward of district assets, PESD uses bond funds to replace components at the end of their useful lives before a “catastrophic failure” occurs. (Weeks Depo. Tr. 4/10/2019 at 89:25-93:5).
- e. In 2018, GESD used local bond funding to complete weatherization, structural repair, and HVAC projects rather than going through the Building Renewal grant program because “[t]he amount of time that it takes to go through the process puts [the district] in a very difficult position as far as ensuring that . . . an HVAC is going up and providing that cooling temperature we need to



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

educate the students . . . [a]nd then there have been times that there just hasn't been sufficient funds to provide that." (Trial Tr. 6/10/2024 at 112:1-13).

- f. Washington Elementary School District ("WESD") has four approved roof replacement projects being held at the construction phase for lack of funding:
- i. WESD submitted a Building Renewal assessment application for Palo Verde Elementary School's roof in January 2020, and the assessment was completed April 23, 2020. The assessment documented that "the thermal moisture protection systems . . . and associated roof systems at [several buildings] have failed and are no longer performing as intended."
  - ii. WESD submitted a Building Renewal assessment application for Moon Mountain Elementary School in February 2019, and the assessment was completed September 8, 2019. The assessment documented that "the roof systems for Buildings #1004 - #1008 at Moon Mountain Elementary School have failed and require immediate repair and renovation to restore the weatherproof integrity. . . ."
  - iii. WESD submitted a Building Renewal assessment application for Orangewood Elementary School in February 2019, and the assessment was completed May 2, 2019. The assessment documented that "Buildings #1017 through #1021 at Orangewood Elementary School require immediate repair and renovation to restore the weatherproof integrity . . . [and the] roof systems [of several buildings] are allowing moisture into the interior of the buildings."
  - iv. WESD submitted a Building Renewal assessment application for Ocotillo Elementary School in February 2018, and the assessment was completed May 2, 2019. The assessment documented that "Buildings #1013 through #1017 at Ocotillo Elementary School require immediate repair and renovation to restore the weatherproof integrity . . . [and the] roof systems [of several buildings] are allowing moisture into the interior of the buildings."

(Pl. Exh. 872; Trial Tr. 6/13/2024 at 112:14-116:18; Pl. Exh. 642, lines 971, 1020, 1022, 1023; Pl. Exh. 877 at 1, 3; Pl. Exh. 878 at 1, 3; Pl. Exh. 879 at 1, 3; Pl. Exh. 879 at 1, 3; Pl. Exh. 880 at 1, 3).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- g. On April 30, 2023, the SFD advised WESD that its four roofing projects were “categorized as non-critical” and “currently there are not sufficient monies to fund non-critical projects.” The notice indicated:

Building Renewal Grant monies will be distributed for the above named project only if the legislature appropriates sufficient monies pursuant to A.R.S. § 41-5731(H). If sufficient monies are not available in the fiscal year in which the project is awarded for a non-critical project, the non-critical project does not receive priority in the next fiscal year pursuant to A.R.S. § 41-5731(H). . . .

(Pl. Exh. 881; Trial Tr. 6/13/2024 at 120:25-122:15).

- h. On May 4, 2023, in anticipation of sufficient funding from the 2024 appropriation, the SFD notified WESD that, even though the projects were categorized as non-critical, **“the district is authorized to proceed with issuing Purchase orders and starting the work.”** But once again, the WESD roofing projects were *not* funded in fiscal year 2024--and there is no guarantee that the projects will be funded in fiscal year 2025. (Pl. Exh. 882 (emphasis in original); Campbell Depo. Tr. 5/3/2024 at 81:10-83:22; Trial Tr. 6/13/2024 at 123:16-124:10).
- i. The funding delays of the WESD roofing projects have resulted in significant increases in the cost estimates to complete the projects. In this regard, the estimated cost for completing the Palo Verde Elementary School project increased from \$2,762,405.04 to \$4,789,637.64. The estimated costs for completing the other WESD projects increased from \$624,260 to \$944,500 in 2019 to more than \$2 million now. (Pl. Exh. 872 at 1, Pl. Exh. 877 at 3; Pl. Exh. 878 at 3; Pl. Exh. 879 at 3; Pl. Exh. 880 at 3).
- j. Glendale Union High School District (“GUHSD”) had an assessment completed for its Building Renewal roofing project at Cortez High School in 2020. The design phase of the project was completed in 2022, and the construction work was bid in 2023. Although it has been four years since the original assessment, the project still has not been funded. When funding is available for the project, it likely will need to be rebid due to the delay. Moreover, the Cortez roof is in bad shape, so periodic temporary patching is not an adequate solution. (Trial Tr. 6/5/2024 at 176:10-178:22, 181:13-21).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- k. The Casa Grande school district has faced similar funding delays to those experienced by GUHSD for the roof at Cholla school. (Trial Tr. 6/5/2024 at 176:10-16, 179:14-180:1).

56. In 2023, the SFD requested funding for 14 additional staff positions, including ten new liaisons assigned to work with districts, “to address the backlog of assessments, allow the division to strengthen relationships with districts, promote engagement and coordination with stakeholders across the state, and allow the Division to sustain compliance and support over time.” The school district liaisons “focus on working with school districts throughout the state to understand the school district needs, assist with finding appropriate and cost-effective solutions, and vet projects for urgency and appropriateness.” The SFD deemed that “these positions are critical to ensure that all of the ongoing and incoming projects are managed effectively.” (Pl. Exh. 721 at 6; Trial Tr. 6/24/2024 at 90:4-91:18).

57. At the current funding level, each SFD district liaison can be responsible for about 45 districts. Although it is beneficial for the liaisons to visit their assigned districts, so they can assess deficiencies and assist with the Building Renewal grant process, it often is not possible for liaisons to visit all their assigned districts. Indeed, liaisons frequently visit only a small fraction of their assigned districts. (Webster-Adams Depo. Tr. 10/28/2022 at 15:14-17:19; Trial Tr. 6/24/2024 at 163:10-14, 171:10-25; Norris Depo. Tr. 2/19/2019 at 15:1-16:9; Kennon Depo. Tr. 2/14/2019 at 22:14-22; Tyler Depo. Tr. 2/9/2024 at 16:25-18:17, 31:18-32:6).

58. The SFD’s inadequate staffing, particularly with district liaisons, has been an ongoing, persistent issue for many years. (Campbell Depo. Tr. 3/20/2019 at 75:14-76:7; Pl. Exh. 96; Pl. Exh. 9 at 40; Trial Tr. 6/13/2024 at 88:16-89:10; Pl. Exh. 206 at 6; Vassar Depo. Tr. 12/19/2019 at 153:21-155:1; Demland Depo. Tr. 2/21/2019 at 16:11-18:19).

59. The SFD explained the impact of its staffing shortfall as follows:

Additionally, the SFD does not have the current existing capacity to provide the level of support needed by schools -- particularly the additional, targeted attention needed from our most high-need LEAs. While funding has increased for the SFD’s Building Renewal Grant (BRG) program, operational funding has not grown to increase the capacity of the SFD’s LEA Liaisons to provide the additional supports needed by school districts to effectively assess their local facilities conditions needs, support best-practices for supporting local preventative maintenance, and how to leverage their local resources more effectively to meet those needs. . . .

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(Pl. Exh. 728 at 10).<sup>6</sup>

60. The SFD's request for increased operational funding was "at the heart of equitable outcomes for all children throughout Arizona." The SFD warned that "if programs are funded to sufficient levels without an increase in operational funding, the Division's resources will be insufficient to meet demand." Moreover, "[t]he Department considered a smaller request, but believes this would not be reflective of the commitment to ensuring that all schools meet minimum educational adequacy standards." The SFD also explained that "[t]he requested funding is necessary to provide districts with the resources needed to run safe and healthy schools." (Pl. Exh. 721 at 6, 10; Trial Tr. 6/24/2024 at 90:4-92:12).

61. The State's Executive Budget for fiscal year 2025 did not include funding for the additional staff requested by the ADOA and the SFD. Nor did the budget passed by the legislature. In the end, the SFD did not receive the requested additional funding for additional staff. In fact, to the contrary, the SFD's operational budget decreased by 3.4%. As such, the SFD remains inadequately staffed. (Trial Tr. 6/24/2024 at 92:15-22; Def. Exh. 893 at 24; Pl. Exh. 780 at 7).

62. The SFD's inadequate staffing and operational funding impacts smaller and rural districts more significantly than other districts. In this regard, some districts have designated staff to manage and handle all Building Renewal projects, but smaller and rural districts do not have that flexibility because their staff members often must fill multiple roles. (Trial Tr. 6/13/2024 at 78:7-16; Bakalis Depo. Tr. 2/27/2019 at 196:7-197:1, 217:5-9; Dooley Depo. Tr. 4/18/2019 at 11:4-13:11; Whitney Depo. Tr. 3/5/2021 at 13:1-14; Smith Depo. Tr. 11/4/2022 at 57:5-58:9; Vassar Depo. Tr. 12/19/2019 at 22:7-23:3).

63. The SFD acknowledged the disparate impact its staffing and operational funding shortfalls have on rural and smaller districts' ability to navigate the complex Building Renewal grant process:

Additionally, many Arizona LEAs, in particular, LEAs serving communities with the most children and families in poverty, those located in and serving rural and rural-remote communities and those with the least capacity to effectively fund and support school facilities (our highest need LEAs), generally have limited knowledge and local capacity to navigate complex school facilities needs and processes. . . .

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<sup>6</sup> "LEA" refers to "local education agency." It is the federal government's term for a local school district. (Trial Tr. 5/30/2024 at 161:16-22).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(Pl. Exh. 728 at 3).

64. Rural school districts receive a much smaller percentage of Building Renewal grants than one ordinarily would expect. In fiscal year 2022, rural districts received 158 Building Renewal grants--or 13% of the approximately 1,200 grants awarded that year. These grants totaled \$12.2 million compared to grants totaling \$96.2 million awarded to urban districts. The statistics are even worse for districts located within Tribal Nations. Although such districts account for 5% of the population, for these districts in fiscal year 2022, the SFD approved seven Building Renewal grant projects and two supplemental awards totaling less than \$3.7 million--or 1.7% of available funding. And 67 school districts--about 30 percent of the State's districts--have not participated at all in the Building Renewal grant program. Because many of those districts would be identified as high-need LEAs, the low level of participation likely is due to district staff being unable to navigate the program's application process. (Tyler Depo. Tr. 2/9/2024 at 80:4-25; Trial Exh. 728 at 5, 6-7; Trial Tr. 6/24/2024 at 121:5-122:17).

65. In 2011, the SFB developed a schedule to conduct inspections of all public K-12 schools, as mandated by state law, within five years to ensure compliance with the MAG. But as early as 2012, the SFB "was unable to meet its performance target due to lack of staff." Indeed, the SFB made the "strategic decision to not comply with this [statutory inspection mandate] in the strictest sense due to lack of resources." The SFB ultimately had to give statutory inspections "very low priority" because "we don't have the staff to do that work." In fact, the priority given inspections was so low that the actual number of inspections conducted by the SFB was *zero* for many years--despite the SFB's statutory duty to conduct the inspections. (Pl. Exh. 18 at 6; Pl. Exh. 17 at 2; Trial Tr. 6/25/2024 at 91:25-93:17; McCarthy Depo. Tr. 2/28/2019 at 20:16-21:20; Bakalis Depo. Tr. 10/4/2018 at 70:10-72:16; Pl. Exh. 1; Pl. Exh. 3 at 3; Pl. Exh. 420 at 40-41).

66. In 2019, the SFD attempted to restart the school inspection program. But the SFD's staffing level in 2019 still was insufficient for the SFD to comply with its statutory duty. The Governor's budget for fiscal year 2019 included \$750,000 to hire third-party consultants to inventory school building systems' age and performance characteristics and create a database; however, the legislature did not approve that funding. (Campbell Depo. Tr. 3/20/2019 at 16:25-17:9, 38:20-39:4; Pl. Exh. 3 at 2).

67. In September 2021, the Arizona Auditor General reported to the legislature that her audit found that the SFB "has not inspected school district buildings as required by statute, limiting its ability to ensure student and staff health and safety and efficient use of State monies, but began developing a self-inspection program during the audit to help meet some inspection requirements." The audit found that the SFB conducted inspections of only four districts in 2019 and had not completed inspection reports. (Pl. Exh. 525 at 4-5, 13-15).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

68. For a ten-year period, as described above, the SFD (and its predecessor) has not fulfilled its mandatory statutory obligation to conduct a MAG inspection of every public K-12 school every five years. Indeed, the SFD (and its predecessor) failed to inspect many schools even once--let alone once every five years. (Trial Tr. 6/13/2024 at 79:5-9; Kennon Depo. Tr. 2/14/2019 at 113:22-114:1).

69. On June 29, 2023, about one year prior to trial in this action, the Governor issued Executive Order 2023-14. The Order recognized the statutory requirement to conduct inspections or certify district self-inspections of every school every five years to ensure compliance with the MAG and the “significant benefits” realized from such inspections. The Order also recognized that the State’s failure to conduct the inspections “is a key issue in litigation that is currently pending against the State” (*i.e.*, this action). As such, the Governor “order[ed] and direct[ed] . . . [the SFD to] inspect or contract with qualified outside personnel not employed by the school or school district being inspected to inspect all public district school buildings in the State not less than once every five (5) years as required by A.R.S. § 41-5702(A)(3).” (Pl. Exh. 699 at 1-2).

70. The SFD hired Shaun Brown (“Brown”) to conduct the inspections ordered by the Governor in Executive Order 2023-14. But Brown did not have the knowledge, experience, or expertise to conduct the inspections. (Trial Tr. 5/30/2024 at 36:8-38:12; S. Brown Depo. Tr. 12/14/2023 at 21:16-24:11; Tyler Depo. Tr. 2/9/2024 at 107:9-108:13).

71. Prior to trial in this action, Brown inspected only 11 districts. Brown’s inspections did not include any evaluation of the districts’ building systems, such as HVAC, electrical, structural soundness, roofs, building envelopes, or plumbing. Brown instead spent most of his assessment time measuring square footage, creating 3-D renderings, and counting microscopes, parking spaces, linear feet of library shelves and reference books. (Pl. Exhs. 752, 798, 800, 805, 811, 816, 817, 821, 827, 830, 833; S. Brown Depo. Tr. 12/14/2023 at 21:16-24:11, 164:12-165:25, 182:23-184:3; Pl. Exh. 780 at 8-9; Trial Tr. 5/30/2024 at 37:17-38:12; Trial Tr. 5/29/2024 at 139:13-153:17).

72. The MAG provide that “[t]he CO<sup>2</sup> level in each general and specialty classroom shall not exceed 700 PPM above the ambient CO<sup>2</sup> level.” A.A.C., R7-6-215.<sup>7</sup> Each of the 11 districts inspected by Brown had schools with CO<sup>2</sup> levels above the MAG, including 30 of the 32 inspected schools with at least one classroom with excessive CO<sup>2</sup> levels. Brown measured excessive CO<sup>2</sup> levels in 127 out of the 169 classrooms he measured. Some of the CO<sup>2</sup> levels were alarmingly high, including at least one that was six times the level allowed by the MAG. (Pl. Exh.

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<sup>7</sup> Effective February 5, 2023, the standard was lowered from the prior standard of 800 PPM. *See* 28 A.A.R. 3939, 3945.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

779 at 1, 3; S. Brown Depo. Tr. 12/14/2023 at 157:6-10; Trial Tr. 5/30/2024 at 38:13-20; Trial Tr. 5/29/2024 at 32:19-33:19, 151:16-153:17).

73. The MAG provide that “[t]he sustained background sound level of each general, science, and art classroom shall be less than 55 decibels.” A.A.C., R7-6-214. Of the 167 classrooms inspected by Brown, 117 classrooms had recorded noise levels above the MAG. All 32 inspected schools had classrooms with noise deficiencies. (Pl. Exh. 779 at 3; Trial Tr. 5/29/2024 at 32:19-33:19).

74. The best practice for addressing classrooms with excessive CO<sup>2</sup> levels is to hire a professional, such as a registered mechanical contractor, to perform additional tests to determine the cause and identify potential solutions. But when Tolleson Elementary School District (“Tolleson ESD”) followed up with Brown about the excessive CO<sup>2</sup> levels in its classrooms and asked whether the CO<sup>2</sup> levels were dangerous and whether it needed to shut down classrooms, Brown responded simply, “No, the CO<sub>2</sub> readings are fine for now. You do not need to shut down any classrooms.” During a follow-up meeting, Brown advised the district to get a CO<sup>2</sup> monitor and change the air filters more often--something the district already had been doing since the pandemic. (Trial Tr. 6/5/2024 at 189:5-190:3; Pl. Exh. 750; Trial Tr. 5/29/2024 at 153:18-157:4).

75. In September 2022, the SFD advised the legislature that a proposed rule change to make the Classroom Air Quality standard consistent with industry standards would cost a minimum of \$75 per HVAC unit annually for units that needed only minor annual adjustments, but some HVAC units would have to be replaced to comply with the new standard. The SFD identified Building Renewal grants as a source of funding related to the rule change. (Pl. Exh. 306 at 2).

76. The SFD transitioned Brown from doing assessments to more of a coordination role and identified two vendors under state contract for a pilot project to conduct end-of-useful-life assessments. As of June 24, 2024, almost one year after the Governor issued Executive Order 2023-14, the vendors identified by SFD conducted assessments at only two districts--Hayden-Winkelman and Tolleson ESD. And the vendors still had not completed reports of those assessments. (Trial Tr. 6/24/2024 at 102:24-104:12).

77. Despite having conducted assessments at only two districts--without any final reports yet--in the first six months of 2024, the SFD hoped to use third-party vendors to complete assessments at 45 districts by the end of 2024. Funding for these assessments is coming from a SASI grant and unobligated New School Facility Funds.<sup>8</sup> The unobligated New School Facility

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<sup>8</sup> A SASI grant is a grant under the “Supporting America School Infrastructure” program. (Trial Tr. 5/30/2024 at 160:19-161:2).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

Funds to be used for this purpose are limited to \$55,000, and the SASI grant can be used only for the 38 SASI districts. (Trial Tr. 6/24/2024 at 104:13-105:6, 107:15-110:19; Pl. Exh. 888 at 1).

78. The SFD anticipated that the 45 inspections it hoped to complete by the end of 2024 would result in additional Building Renewal project applications to correct deficiencies discovered in the inspections. But the SFD already lacked funding for the existing backlog of known MAG deficiencies. (Trial Tr. 6/24/2024 at 115:7-22).

79. In fiscal year 2024, the SFD received a \$1 million appropriation to conduct the statutorily mandated school inspections. That amount was “a placeholder,” and it was known that the appropriation was insufficient to fund a full inspection program of all Arizona public schools. As of June 24, 2024, the SFD had about \$600,000 of the appropriation remaining, and as discussed above, had not yet completed any assessments with final reports. (Trial Tr. 6/24/2024 at 113:18-114:17).

80. The ADOA’s funding request to the Governor for the fiscal year 2025 budget admits that the State is not fulfilling its obligation to provide funding for all of Arizona’s public schools:

**Options Considered**

The School Facilities division finished FY 2023 with \$115 million in projects beyond the funded level. It is expected that demand will continue to persist and even grow as districts come out of the pandemic years when schools were utilized less. The Department considered a smaller request, but believes this would not be reflective of the commitment to ensuring that all schools meet minimum educational adequacy standards.

**Why is the recommended option the best option?**

The State has a responsibility to ensure that schools are safe and in good condition for learning. Throughout Arizona, but especially in rural and Tribal communities, this is not the current situation. The requested funding is necessary to provide districts with the resources needed to run safe and healthy schools.

**Promoting Equitable Outcomes**

This initiative is at the heart of equitable outcomes for all children throughout Arizona. Often rural and Tribal schools are in desperate need of updating and repairs. Additionally, schools in low income



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

neighborhoods require modernization in order to provide for safe and modern learning environments.

(Def. Exh. 871 at 10 (emphasis in original); Pl. Exh. 721 at 6).

**Outdated MAG**

81. As set forth above, the MAG originally were created as part of Students FIRST, which was enacted in 1998. The SFB and the SFD unsuccessfully attempted to revise and update the MAG several times. (Trial Tr. 6/13/2024 at 94:25-96:11; Trial Tr. 5/30/2024 at 17:1-17; Pl. Exh. 79 at 1).

82. The consensus, even among SFB and SFD personnel, is that the MAG are outdated. (Demland Depo. Tr. 2/21/2019 at 89:14-22; Orcutt Depo. Tr. 1/29/2020 at 47:18-20, 121:13-22, 153:21-154:1; Pl. Exh. 68 at 2; Pl. Exh. 734; Pl. Exh. 728 at 9; Trial Tr. 5/30/2024 at 11:18-12:10).

83. In 2019, the MAG were revised, but the revisions were mostly technical. The revisions that could be made were limited because, by statute, “this expedited rulemaking cannot include any provision that increases the cost of regulatory compliance.” As a result, the revisions did not include many of the stakeholder group’s suggestions. (Trial Tr. 5/30/2024 at 18:1-4; Pl. Exh. 249 at 5; Pl. Exh. 248 at 1).

84. The SFB/SFD’s consultant regarding MAG revisions informed the State that the existing MAG “do not serve students well” and “[t]he proposed rules do not address issues discussed in the MAG stakeholder meetings.” (Pl. Exh. 249 at 5; Pl. Exh. 257; Pl. Exh. 585; Pl. Exh. 588 at 1).

85. “[It] was contemplated that a subsequent rulemaking process would address numerous issues that had been raised by the 2019 Committee, including guidelines pertaining to technology, square footage, safety and security, the appropriateness of evaporative cooling in the modern classroom environment, and other issues[.]” (Pl. Exh. 734 at 1).

86. The subsequent rulemaking occurred and changed the MAG’s technology standards in 2023. Specifically, the rulemaking changed the ratio of computer devices to children from 8 children to 1 device to 1 device per child. The technology standard was inadequate for many years until the 2023 change. Indeed, in 2007, the SFB issued a written report stating that (among other things) “[c]lassrooms for kindergarten through 3<sup>rd</sup> grade should have a ratio of one laptop, or comparable personal computing device, for every 3 students (1:3 ratio)” and “[i]n classrooms for Grades 4 through 12 the ratio should be 1:1.” (Pl. Exh. 42 at 2; Trial Tr. 5/28/2024 at 42:14-43:3).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

87. When the technology standard was changed to 1:1, no funding was provided for districts to implement the change. Building Renewal grant funds cannot be used for schools to obtain computers or other technology. The SFD cannot fund computers or other technology except in the context of new school construction. (Trial Tr. 6/13/2024 at 94:15-18; Campbell Depo. Tr. 10/4/2018 at 29:15-30:1; Pl. Exh. 780 at 2; Pl. Exh. 636 at 4-6).

88. The school security standards in the MAG were adopted before many well-known school security breaches. In late 2006, the Governor's office asked the SFB to evaluate school security issues and make recommendations for security measures to be incorporated into new schools. SFB staff extensively reviewed nationally recommended best practices and compiled best practices recommendations. (Pl. Exh. 5 at 1).

89. The SFB issued its recommendations for 11 school security design elements. The SFB expressed that "the design elements should be a part of any school district's new construction design objectives" and "believes that incorporation of the design elements during the planning phase for a new school can be cost effective when considered as a part of an overall school security program." The SFB's request to fund four of the recommendations "would involve both an appropriation and legislative action to change the cost per square foot for new school construction by an additional 1.6% to be dedicated toward school safety items in new schools." "Based on projected FY 2009 awards of \$427.7 million, the impact over five years would be approximately \$6.8 million." The SFB approved the final recommendations at its August 2, 2007 meeting. (Pl. Exh. 5 at 2-6; Pl. Exh. 182 at 6; Pl. 46 at 1, 2; Pl. Exh. 56 at 3).

90. Although the SFB approved the final school security recommendations, the SFB did not update the MAG to include them. As such, a district's failure to implement the security recommendations in existing buildings does not constitute a MAG deficiency--which means the SFB and the SFD cannot fund projects to modify existing buildings to meet the approved security recommendations. The SFD can provide enhanced security-related funding only to implement the security enhancements in new school construction. For instance, the SFB and the SFD have denied funding requests for security enhancements such as: (i) rekeying doors to lock from the inside; (ii) installing security fencing around the school perimeter in place of chain link and decorative fencing less than four feet high; (iii) hardening a vestibule entry point; (iv) securing an opening in a gate; (v) installing features to funnel campus visitors to the office; and (vi) placing bulletproof film on large windows. (Trial Tr. 6/6/2024 at 186:15-25; Bakalis Depo. Tr. 2/27/2019 at 82:1-17; Lees Depo. Tr. 12/28/2022 at 39:24-40:18; Pl. Exh. 68 at 2-3; Dooley Depo. Tr. 4/18/2019 at 68:19-71:11; Trial Tr. 6/5/2024 at 92:9-95:16; Pl. Exh. 673 at 8-20; Norris Depo. Tr. 2/19/2019 at 30:18-31:7; Brand Depo. Tr. 4/5/2019 at 37:4-41:6, 51:1-25; Pl. Exh. 120; Demland Depo. Tr. 2/21/2019 at 74:22-76:10; Pl. Exh. 123 at 2-3).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

91. The MAG's security standards do not include single point of entry, universal locking mechanisms, or cameras. As a result, districts cannot receive Building Renewal funding to update existing buildings to include these features. (Tyler Depo. Tr. 2/9/2024 at 18:21-20:1).

92. The SFD agrees that "[b]ecause of school shootings and other safety issues, additional guidelines regarding security are needed." The MAG's security standards are outdated and inconsistent with best practices for school security and safety. (Pl. Exh. 249 at 7; Bakalis Depo. Tr. 10/4/2018 at 95:17-96:17, 97:17-101:22; Trial Tr. 6/6/2024 at 21:9-22:1; Norris Depo. Tr. 2/19/2019 at 106:22-25).

93. In 2020, the SFB proposed adding a new rule (R7-6-206) to the MAG entitled "School Facility Safety," which would have required that "[a] school facility shall be designed to maximize safety of individuals using the school facility" and would have identified 14 safety features that "shall be considered when designing a school facility." The new rule was not adopted because of concerns that it could "increase compliance costs." (Pl. Exh. 254 at 3-4; Pl. Exh. 249 at 7).

94. The Governor has declared that "a child's ability to attend a reasonably safe and secure school should not depend on the property wealth of that child's district or a district's ability to pass bonds and capital overrides[.]" Despite this proclamation, as set forth above, the MAG have not been updated as they pertain to school safety and security. (Pl. Exh. 734 at 2).

95. The SFB agreed that "[e]vaporative cooling is not a good source of cooling in a modern classroom" and "[e]vaporative cooling systems should be replaced with HVAC units." But this issue could not be addressed during the expedited rulemaking in 2020 because "replacing an evaporative cooling system with an HVAC unit results in increases in the cost of compliance." Although the SFB indicated this issue would be addressed in subsequent rulemaking, the MAG were not revised to mandate replacing all evaporative cooling systems with HVAC units. To the contrary, the revisions effective February 4, 2023, eliminated the requirement that defective or non-operable evaporative coolers be replaced with air conditioning in schools where the elevation is 5,000 feet or below. The current version of the MAG (R7-6-213) only requires that "[a] school facility shall have an HVAC or other system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom." (Pl. Exh. 249 at 9-10; A.A.C., R7-6-213; 26 A.A.R. 2963; 28 A.A.R. 3939).

96. Notably, the Governor's budget for fiscal year 2023 included an expenditure of \$127.2 million over four years to replace all evaporative coolers with HVAC units in the State's prisons. The rationale for this expenditure, at least in part, was that the moisture created from evaporative coolers degraded metal components in the prisons, specifically the locks, and air conditioning would be more comfortable for the prison staff and inmates. The justification

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

provided in the budget was that “Arizona’s extreme heat and monsoons impede [evaporative coolers’] effectiveness” and “[m]oisture from the evaporative coolers causes deterioration and damages the facilities’ technological infrastructure.” (Trial Tr. 6/25/2024 at 144:20-146:19; Def. Exh. 16 at 427).

97. The MAG standards for student transportation provide that “pupil transportation vehicles” (*i.e.*, school buses) manufactured prior to 1978 shall be replaced. When this standard was implemented around 1999, the standard meant that buses more than 20 years old had to be replaced. But that standard has not been updated--which means that, currently, buses can be 47 years old before replacement based on the vehicle’s age is mandated. Basing the standard on a particular year that a vehicle was manufactured, rather than on the age of a vehicle, does not make sense unless the standard is regularly updated to change the year of manufacture in the standard--which has not happened with this standard. Thousands of buses that were manufactured after 1978 but are more than 20 years old are used by districts to transport students. (A.A.C., R7-6-240(A); 28 A.A.R. 3939; Trial Tr. 5/28/2024 at 53:4-14; Pl. Exh. 842).

**Limitations on Funding for Necessary Capital Items**

98. Certain school district “non-academic” administrative facilities are necessary for all but the smallest school districts to operate and educate students. Such facilities include district offices (including space not just for administrators, but also for counselors and health providers), bus barns, central kitchens, professional development space, warehouse space, and technology hubs. (Pl. Exh. 225 at 13; Trial Tr. 5/28/2024 at 81:18-82:13; Trial Tr. 6/4/2024 at 40:8-41:5; Trial Tr. 6/6/2024 at 19:20-20:12, 127:1-17; Muir Depo. Tr. 4/10/2019 at 139:24-140:17; W. Johnson Depo. Tr. 8/16/2019 at 126:14-127:14; Weeks Depo. Tr. 4/10/2019 at 119:1-11; Hicks Depo. Tr. 3/27/2019 at 160:15-161:7; Berry Depo. Tr. 5/17/2019 at 135:21-136:5, 155:2-25; Masel Depo. Tr. 10/18/2022 at 28:1-7; Thompson Depo. Tr. 3/20/2019 at 19:9-20:10).

99. District offices are essential in that they provide space for district employees to provide necessary and legally required instructional support services, including student and financial record-keeping, payroll, human resources, special education support, and staff training. Without centralized space, districts would have to utilize space in schools for such functions, taking away instructional space. (Trial Tr. 5/28/2024 at 80:4-17, 81:18-82:13, 83:9-14; Young Depo. Tr. 12/15/2022 at 153:22-154:20; Carlson Depo. Tr. 8/21/2019 at 129:13-130:6).

100. Transportation facilities are necessary for districts to educate students because many parents rely on districts to transport their children to school. More importantly, some special education students have individual education plans that mandate district transportation. Without bus barns and similar facilities, districts would be unable to maintain their bus fleets to provide

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

such transportation. (Trial Tr. 6/6/2024 at 20:13-21:8; Muir Depo. Tr. 4/10/2019 at 139:24-140:17).

101. Building Renewal grant funding is not available to correct deficiencies in non-academic administrative facilities. (Pl. Exh. 225 at 13; Trial Tr. 5/28/2024 at 79:19-24).

**Funding of New School Facilities**

102. Under Students FIRST, monies for new schools based on anticipated growth allowed schools to be built when projections showed that an elementary school would be needed within two years, or a middle or high school would be needed within three years. (Pl. Exh. 225 at 8-9; Pl. Exh. 77 at 1).

103. Beginning in fiscal year 2011, the legislature imposed a moratorium on state funding for new school construction due to the recession. (Trial Tr. 6/13/2024 at 84:16-85:14; Pl. Exh. 225 at 9; Pl. Exh. 100; Trial Tr. 6/11/2024 at 93:6-12).

104. During the moratorium, districts with adequate bond funds, such as Chandler Unified School District and Laveen School District, continued to build new schools to meet their needs. Because of the lack of state funding for capital projects during this period, districts sought to increase their bonding capacity limit from 10% to 20%. (Pl. Exh. 541; Berry Depo. Tr. 5/17/2019 at 158:15-159:24).

105. New schools constructed with local bond funds instead of state funding are considered “excluded space”--meaning such schools are barred from eligibility for Building Renewal grant funding to correct future MAG deficiencies. (Trial Tr. 6/13/2024 at 35:17-37:16; Webster-Adams Depo. Tr. 10/28/2022 at 47:6-20; Trial Tr. 6/4/2024 at 26:5-27:3).

106. In 2013, the legislature lifted the moratorium on funding for new school construction. But in doing so, the legislature eliminated the use of projections in determining new school needs. Districts instead were required to be over capacity in the current school year to qualify for new school construction funding in the next school year. In other words, districts could not obtain approval of State funding to build new schools to prevent overcrowding from occurring. “An unintended consequence of the change is school districts being over capacity for multiple years” because “[t]he length of time to secure land, procure an architect and construction manager, and design and construct the school can take as long as three years.” (Pl. Exh. 225 at 9; Pl. Exh. 408 at 13-14; Pl. Exh. 77 at 1).

107. In 2019, after Plaintiffs filed this action, the legislature modified the criteria for new school construction funding to allow a district to qualify for funding if it was projected to be

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

overcrowded within two years. But the modification did not restore the original Students FIRST timeline that allowed approval for new middle or high schools if overcrowding was projected within three years. As noted above, the process for constructing a new school takes as long as three years. The State's prior Superintendent of Public Instruction proposed "[r]estor[ing] previous practices to allow SFB to approve school district new building projects, up to three years in advance, for those districts who present credible findings and overwhelming evidence that the district will exceed capacity." (Pl. Exh. 225 at 9; Pl. Exh. 77 at 1; Pl. Exh. 421 at 7-8).

108. Students FIRST established a statutory formula for determining the amount of new school construction funding per square foot (the "New Schools Facilities Formula"). The New Schools Facilities Formula provided sufficient funds to build new schools when it was first enacted. (Pl. Exh. 225 at 8).

109. The New Schools Facilities Formula provides 80% of the formula amount toward facility construction costs and the remaining 20% toward design, furniture, fees, and equipment costs. (Trial Tr. 6/13/2024 at 94:19-24; Campbell Depo. Tr. 10/4/2018 at 35:16-25).

110. The New Schools Facilities Formula originally enabled the SFB to increase the amount of funding when the formula amount was insufficient to build a MAG-compliant school. Indeed, in fiscal year 2008, the SFB funded 90% of their new school projects over the formula amount for a total of \$31.1 million--which was about \$1.5 million of additional funding per project. (Pl. Exh. 139 at 5; Stavneak Depo. Tr. 4/15/2019 at 81:19-15; Rushin Depo. Tr. 2/21/2019 at 43:18-23).

111. Effective in 2009, the legislature amended the New School Facilities Formula statute to eliminate the SFB's authority to increase new school construction funding amounts above the formula amount based on inflationary factors. The SFB was limited to providing increased funding only for geographic and site conditions. The Joint Legislative Budget Committee sets the New School Facilities Formula. (Pl. Exh. 403 at 14; Pl. Exh. 54 at 9; Trial Tr. 6/13/2024 at 148:3-5).

112. In February 2012, the SFB notified the Joint Legislative Budget Committee and the legislature's Joint Committee on Capital Review that "[c]urrent market conditions . . . would not provide sufficient funds to build a school to the Minimum School Facility Guideline requirements" and "[i]f, as it appears, the School Facilities Board does not fund construction of another school until FY 2014 at the earliest, then a construction cost index from 2008 certainly could not be used to build a Minimum School Facility Guideline school." The SFB requested the Joint Committee on Capital Review to adjust the new school construction cost index effective in fiscal year 2013 "by 6.6% for K-8 grade levels . . . and by 7.26% for 9-12 grade levels. . . ." (Pl. Exh. 192 at 1-2).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

113. Between 2013 and 2017, the SFB continued to notify the legislature that the New School Facilities Formula was inadequate to construct a new MAG-compliant school and requested market-based adjustments to the formula adopted in 2008. In December 2016, the Joint Legislative Budget Committee approved a 4.1% increase to the new school construction cost index for fiscal year 2018. In November 2017, the SFB notified the Joint Legislative Budget Committee that “current market pressures suggest that the index should be adjusted for FY19” because “the current index does not provide sufficient funds to build a school that meets the expectations intended by the Minimum Adequacy Guidelines. . . .” District officials also confirmed that the New Schools Facilities Formula was inadequate. (Pl. Exh. 193; Pl. Exh. 516; Pl. Exh. 517; Pl. Exh. 575; Pl. Exh. 576; Pl. Exh. 514; Pl. Exh. 49 at 1; Pl. Exh. 76; Campbell Depo. Tr. 3/20/2019 at 69:15-24; Peterson Depo. Tr. 3/28/2019 at 54:4-23; Berry Depo. Tr. 5/17/2019 at 10:20-11:19).

114. Several districts could build new schools only by using bond funds, which covered about half of the cost of building a new school. For instance, the SFB’s 2019 annual report showed the SFB’s partial funding of the following new schools: (i) Silver Valley Elementary School in the Queen Creek Unified School District (“QCUSD”), which cost \$20 million to build (only \$8.98 million of which was provided by the SFB); (ii) Eastmark High School in the QCUSD, which cost \$49 million to build (only \$24.7 million of which was provided by the SFB); and (iii) West Point High School in Tolleson Union High School District, which cost \$108 million to build (only \$48 million of which was provided by the SFB). (Bakalis Depo. Tr. 2/27/2019 at 95:10-21; Vassar Depo. Tr. 12/19/2019 at 158:9-159:25; Pl. Exh. 207 at 5-6).

115. The Governor’s budget for fiscal year 2021 recognized that the New School Facilities Formula had been significantly underfunded for years: “From FY 2000 to FY 2009, increases were made to the square footage calculations for new construction, with no further adjustments, until FY 2017. According to the Quarterly Construction Costs Report by Rider Levett Bucknall, square footage calculations are underfunded by about 50% on average.” The budget sought “to fully resolve this disparity beginning with FY 2021 schools.” (Pl. Exh. 220 at 2).

116. Even with the 2021 increase in new school construction funding, the New School Facilities Formula remains inadequate to build a MAG-compliant school. (Trial Tr. 6/5/2024 at 169:13-171:1, 213:2-12; Pl. Exh. 780 at 10-11; Trial Tr. 6/6/2024 at 15:2-13; Trial Tr. 06/13/2024 at 149:6-150:12; Campbell Depo. Tr. 5/3/2024 at 63:5-15).

117. The SFD’s program manager testified on April 25, 2024, about one month before trial began, that she was unaware of any new school construction projects built solely with money from the New School Construction Fund. At trial, she testified that she learned after her deposition that to build a new school within the formula amount, Douglas School District changed the building type of a new school under construction from “brick and mortar to a pre-engineered metal building.” The person who oversees the new school construction process for the SFD testified

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

consistently with that. She also confirmed that the Douglas project was “additional space built on the existing Douglas High School site as opposed to a brand-new site that involved building a new school from scratch on undeveloped land.” (Trial Tr. 6/25/2024 at 79:4-80:8; Trial Tr. 6/13/2024 at 148:6-149:9; Peterson Depo. Tr. 4/25/2024 at 12:23-13:15; Campbell Depo. Tr. 4/25/2024 at 22:9-13, 23:23-24:4).

118. Because the New School Facilities Formula is insufficient to build a MAG-compliant school, even with cost-saving concessions in the design process (such as building sidewalks out of dirt and decomposed granite instead of concrete and eliminating ceilings and carpet from classroom space), districts must find extra money from other sources to build new schools. But sometimes districts are unable to find the necessary extra money, as was the case with Deer Valley Elementary School in the Deer Valley Unified School District. (Trial Tr. 6/5/2024 at 164:10-165:4, 169:13-171:1, 172:4-175:17, 195:7-196:9, 197:22-198:11, 212:16-20).

119. Some districts do not have sufficient property value to obtain additional funding for new school construction through bonds or budget overrides. As detailed further below, Somerton Elementary School District (“Somerton”), a rural district with four elementary schools and one middle school near the United States-Mexico border, is an example of such a district.

- a. Somerton was experiencing overcrowding, with classrooms of 30 students. Many of the students were English language learners who needed individual or small group attention.
- b. In 2018, the SFB approved Somerton for two new schools to be funded with New School Facilities Formula funds. The formula provided \$3.3 million for each school, but only 80% of the formula funding could go toward construction costs. Somerton obtained donated land for the two schools.
- c. One of Somerton’s “guiding principles” in designing the new schools was to “[d]esign to the Arizona School Facilities Board (SFB) Minimum Adequacy Guidelines, without exceeding them.”
- d. In 2019, Somerton’s architect received a construction estimate of \$8.7 million for each school--almost three times greater than the formula funding.
- e. During meetings between Somerton and SFB leadership, the SFB indicated that “most schools will add their own bond or override money to the build” and asked Somerton whether the district had money to contribute toward the new school construction.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- f. Because Somerton did not have a source for additional funding, the SFB told Somerton that the only way to get more money appropriated would be to go to the legislature. But the pandemic shutdown left Somerton with no way to seek an additional appropriation.
- g. Somerton moved forward with obtaining bids for one of the schools. The lowest of four or five bids was \$5.5 million in construction costs and another \$1.4 million in soft costs--more than twice the amount of formula funding.
- h. Somerton's high poverty rate and low assessed property values make it impossible for the district to supplement New School Facilities Formula funds with bond funds to construct the new schools it needs. Indeed, with the low assessed property values in the district, Somerton could not legally ask in a bond or budget override election for enough money to make up the formula shortfall.
- i. Without any source of additional funding, Somerton was unable to build the new schools. As a result, Somerton had to bus special needs students 30 to 60 minutes to and from school each day.

(Noel Depo Tr. 10/25/2020 at 13:18-14:5, 19:4-17, 33:8-23, 34:12-35:7, 49:11-20, 51:2-52:20, 53:23-55:23, 56:10-57:2, 58:8-24, 60:13-61:3, 63:12-65:14, 91:1-17, 96:9-98:18, 99:3-100:4, 111:16-114:23, 116:15-117:1, 136:2-137:4, 139:12-21, 142:10-144:5; Pl. Exh. 391; Def. Exh. 734 at 2; Pl. Exh. 261; Pl. Exh. 551; Pl. Exh. 780 at 10-11).

120. The SFD generally does not see “a lot of . . . gold plating”--a term the SFD's program manager used to refer to the concept of districts “go[ing] with design features that are above and beyond the minimum guidelines.” Rather, the SFD sees districts working to make sure that their new school designs are within the formula amount because “there's . . . a limited budget to build new space[,]” “they've got to make it all work within that budget unless they have local monies they can contribute[, and] “in most cases, the districts don't have local monies to contribute.” In fact, although “[t]here are some design components that there's different price points for[,]” districts “usually [choose] the low end” because they “have a limited budget.” (Trial Tr. 6/13/2024 at 70:20-71:11, 153:11-22).

121. The SFD's program manager is not aware of any examples in the three years preceding trial where districts selected capital equipment, mechanical systems, or roofing systems that are more expensive than other available options when designing a new school. (Campbell Depo. Tr. 5/3/2024 at 27:15-28:17).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

**District Additional Assistance**

122. As set forth above, beginning in 2014, the legislature provided funding for districts' soft capital needs (combined with M&O funding) through "District Additional Assistance" ("DAA").

123. A district's DAA is determined by formula based on enrollment. But for fiscal years 2009 to 2022, the legislature appropriated less funding for DAA than the formula amount. During that period, the cumulative DAA shortfall for all districts without any adjustment for inflation is about \$3 billion. (Trial Tr. 6/5/2024 at 31:5-33:11; Pl. Exh. 601 ("Annual DAA Shortfall, FY2007 to FY 2023" and "Cumulative DAA Shortfall" tabs)).

124. In 2022, the legislature restored DAA funding to the formula level and increased the DAA formula incrementally in fiscal years 2023, 2024, and 2025, for a cumulative total increase of 27.53%. But the restoration of funding to the formula level and the increase in the formula did not replace any of the below-formula funding for the 13 years between 2009 and 2022 or eliminate the lasting impact the below-formula funding had on districts. (Pl. Exh. 225 at 18; Pl. Exh. 780 at 11; Trial Tr. 5/28/2024 at 30:10-21; Pl. Exh. 748 at 3; Trial Tr. 5/29/2024 at 115:21-116:16; Thompson Depo. Tr. 3/20/2019 at 33:23-34:12).

125. Examples of the significant DAA funding cuts and the impact of those cuts include:

- a. The formula provided that Tolleson ESD was supposed to receive about \$1.5 to \$1.6 million of annual DAA funding for M&O and soft capital items such as textbooks and technology. In 2009, and for more than ten years thereafter, Tolleson ESD's allocation was reduced by 85% to about \$150,000 per year. When the DAA cuts were made, Tolleson ESD's annual software cost to run school operations was about \$250,000. The annual software cost now exceeds \$400,000. Tolleson ESD was fortunate to have bond monies to use in place of the cut DAA funds.
- b. The formula provided that Somerton was supposed to receive about \$1.2 million of annual DAA funding. During the period of DAA funding cuts, that amount decreased to about \$150,000. The significant reduction severely impacted Somerton's ability to perform even basic preventative maintenance because the reduced amount of DAA funding was not even enough to pay for changing the district's air conditioning filters. Somerton had to let other items, such as resurfacing cracked blacktop, go until DAA funding according to the formula was restored.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(Trial Tr. 5/29/2024 at 110:25-112:6; Noel Depo. Tr. 10/28/2020 at 131:5-133:20).

126. The DAA formula is not indexed to inflation, and DAA funding was not adjusted for inflation between fiscal years 2000 and 2022. Even with the recent increases in the DAA formula in 2023 and 2024, the current level of DAA funding provides only 70% of the purchasing power DAA provided when Students FIRST was enacted. By way of example, in 2000, the amount of DAA funding per pupil for elementary schools was \$450.76. Although the nominal per pupil amount in 2024 was \$549.45, when adjusted for inflation, the 2024 per pupil amount is equivalent to \$304.99 in 2000 dollars. For high school students, the per pupil DAA in 2000 was \$492.94. Although the nominal per pupil amount for high school students in 2024 was \$600.86, when adjusted for inflation, that amount is the equivalent to \$333.42 in 2000 dollars. (Trial Tr. 5/30/2024 at 35:21-36:7; Joraanstad Depo. Tr. 4/2/2019 at 138:24-139:13; Trial Tr. 6/5/2024 at 33:12-34:19; Pl. Exh. 601 (“Impact of No Inflation Adjustment on District Additional Assistance” tab)).

127. Unlike DAA, the assistance for charter schools (“Charter Additional Assistance” or “CAA”) is indexed to inflation. As a result, the DAA loss of purchasing power from 2000 to 2020 is much greater than the CAA loss of purchasing power over that same period. For instance, as set forth above, when the 2024 per pupil DAA nominal amount for elementary schools is adjusted for inflation, it is the equivalent of \$304.89 in 2000 dollars--which is less than 68% of the 2000 per pupil nominal amount (\$450.76). By way of comparison, when the 2024 per pupil CAA nominal amount for elementary schools (\$2,049.12) is adjusted for inflation, it is the equivalent of \$1,137.07 in 2000 dollars--which is more than 94% of the 2000 per pupil nominal amount (\$1,204.67). The percentages are the same when comparing the DAA and CAA loss of purchasing power for high school students. (Trial Tr. 6/5/2024 at 34:20-35:22; Pl. Exh. 601 (“Impact of Having or Not Having and [sic] Inflation Adjustment on District and Charter Additional Assistance” tab); Stavneak Depo. Tr. 4/15/2019 at 56:5-57:4).

128. Even with restoration of DAA funding to the formula level, the amount of DAA funding is insufficient for districts to meet their soft capital needs. (Trial Tr. 5/29/2024 at 161:21-162:10, 215:24-216:6; S. Johnson Depo. Tr. 8/13/2021 at 132:21-134:10; Trial Tr. 6/6/2024 at 23:4-24:17).

129. Tucson Unified School District (“TUSD”) is an example of a district for which the restoration of DAA funding to the formula level has not resolved the district’s capital needs. In this regard:

- a. TUSD cannot maintain its bus fleet with current funding levels due to the high incident level of bus breakdowns, including the failure of air conditioning systems, and the advanced age of the district’s buses. As a result of air conditioning failures, the district in some cases has not been able to meet the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

terms of individual education plans mandating transportation in air-conditioned buses. In addition, the district spends “more and more money to replace part after part after part” on vehicles that are past their useful life.

- b. About 50% of TUSD’s students are transported to and from school by bus. TUSD is using bond monies on buses because “most of [its] fleet is over two decades old” and the district “needed to ensure that [it] provided safe, adequate school buses to [its] students.” TUSD plans to allocate \$23.7 million of its bond funds to transportation.
- c. TUSD’s soft capital needs that cannot be funded through the Building Renewal grant program include “[t]hings as basic as furniture.” The district’s furniture, which is multiple decades old, “is outdated and . . . not conducive to current learning”--which includes “small group project-based learning” rather than the students being seated “all in rows in desks.”
- d. TUSD considers technology “a fundamental component of instruction”--“particularly post pandemic.” The district’s technology needs have increased now that the district follows the 1:1 student-device ratio, which was implemented during the pandemic with ESSER funds. The district’s needs include laptops, software, network-building, and wireless components. To sustain its technology needs, TUSD’s recently approved bond request included a technology budget of \$27.8 million for FY 2024, \$29.5 million for FY 2025, \$29.9 million for FY 2026, \$26 million for FY 2027, and \$36 million for FY 2028--for a five-year total of more than \$160 million. TUSD plans to allocate \$66.4 million of the \$480 million of approved bond funds for its technology needs.

(Trial Tr. 6/6/2024 at 112:16-114:8, 124:25-125:24, 135:16-136:2; Young Depo. Tr. 12/15/2022 at 68:18-69:13, 72:24-73:20; Muir Depo. Tr. 4/10/2019 at 135:2-14; Pl. Exh. 766 at 6; Pl. Exh. 638 at 5-6).

130. Other districts face similar capital funding shortfall problems to those faced by TUSD. For instance:

- a. Mohawk Valley Elementary District (“Mohawk Valley”) has “very, very old bus[es],” including two 2003 buses--one with more than 180,000 miles, and the other with 203,000 miles. The district recently used funds from a VW settlement grant to replace its oldest bus, which was a 1994 model with more than 300,000 miles.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- b. Elfrida lacks sufficient capital funding to update its social studies and science curriculum. Because the district has no textbooks, teachers search online to find updated curriculum and even spend their personal funds on teaching resources for their students. Elfrida also lacks devices for every student and has unreliable internet service.
- c. Elfrida owned three “old” buses that “broke down a lot.” The district tried to save money to purchase a new bus because repairing the old buses was expensive. After unsuccessfully seeking assistance from the SFB, the district obtained a bus through a three-year lease-purchase.

(S. Johnson Depo. Tr. 8/13/2021 at 136:6-137:1; Brand Depo. Tr. 8/5/2019 at 89:9-23, 107:21-108:13; Trial Tr. 6/3/2024 at 11:6-14:3).

131. The SFD cannot fund districts’ soft capital needs, such as buses, technology, and curriculum, through the Building Renewal grant program. (Trial Tr. 6/13/2024 at 94:15-18; Campbell Depo. Tr. 10/4/2018 at 29:15-30:25; Tyler Depo. Tr. 2/9/2024 at 13:18-21)

132. When the DAA formula originally was adopted, districts had very different technological needs than they do today. The DAA formula has not been updated to address the technological changes facing districts. One district’s superintendent aptly described the challenges districts currently face because of changing technology and the lack of funding for that technology:

Originally, when those [DAA] numbers were set, you used to be able to have a textbook, and you would purchase a textbook one time, and that textbook could last you 15 years, 20 years if you didn’t have enough funding to get it replaced, and you could just -- that battered old textbook, you could push it as long as you needed to push it. ·

That’s not the world we live in today, and the formula has not been updated to reflect the world we live in today.· At our district, every student gets a device.· Every student has a laptop.· On those laptops, we have to provide their curriculum, their resources.· Those resources have annual licensing fees, so it’s not like a textbook where you buy it one time and now run it for as long as you think you can run it. It is every year we have to pay that licensing cost to keep having that resource available to our students.

The costs that we are seeing today significantly outweigh the costs that were back then, and the only formula that has been moving with inflation since that point was charter additional assistance.· We’ve only in recent years seen that on district additional assistance.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(Trial Tr. 6/6/2024 at 23:20-24:17).

**Disparities Between Districts With Bond And Override Funds And Those Without**

133. When Students FIRST was enacted, districts used capital override and bond funds to supplement State funding to provide facilities and equipment above and beyond the minimum State standards. Currently, a significant number of districts use local funds just to meet the minimum standards. (Pl. Exh. 225 at 19).

134. The ability to access local funds varies greatly between districts depending on the amount of property wealth in a particular district and a particular district's voters' willingness to approve a bond request. (Pl. Exh. 225 at 24; Pl. Exh. 780 at 12).

135. Districts with bond funds often resort to using those funds for their basic capital needs. (Rushin Depo. Tr. 2/21/2019 at 127:5-21).

136. Districts with bond funds can (and often do) use those funds to fix MAG deficiencies, such as leaking roofs and non-functioning HVAC units, without the delays that occur when the SFD runs out of funds for approved Building Renewal projects. These districts also can more effectively invest their bond funds in deferred maintenance projects to keep their facilities from falling below the MAG. Districts without access to bond or other sources of local funding, however, cannot perform this same kind of maintenance. (Trial Tr. 6/5/2024 at 216:2-12; Kennon Depo. Tr. 2/14/2019 at 14:11-25, 68:5-70:5; Bakalis Depo. Tr. 2/27/2019 at 22:16-25).

137. Rural districts have a harder time maintaining their facilities than urban districts because of the lack of available bond funding. "Usually urban school districts have bond monies to figure out what they want to spend to maintain those facilities, so they are in a better position than the rural school districts." "The rural districts tend to have older facilities, and the rural districts have less funds . . . available to them to update some of those facilities." (Gandhi Depo. Tr. 2/13/2019 at 28:22-29:7; Norris Depo. Tr. 2/19/2019 at 18:3-12).

138. Districts "without robust local funding" (*i.e.*, bonds) struggle to maintain their facilities. (Trial Tr. 6/12/2024 at 49:17-22).

139. Districts with a low property tax base--"[p]articularly in mining towns, in farming communities, and places . . . that used to have a thriving timber industry that don't have that base anymore"--are "very limited in the staff that they can hire [and] afford." As a result, staff in those districts "wear[] lots of different hats" and "do a lot of different things." And "[w]herever there was mining, there's old buildings." Fifteen districts currently use classrooms that are more than 100 years old. (Morrison Depo. Tr. 11/2/2022 at 38:6-19; Norris Depo. Tr. 2/19/2019 at 18:3-12).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

140. The SFD's district liaisons notice disparities between districts with access to bond funds and districts without access to bond funds. For example, districts with bond funds have "all new air conditioning . . . , their buildings are all painted, [and] they regularly maintain their asphalt." Districts without bond funds struggle overall with their facilities. They experience "[t]heir maintenance departments get[ting] cut to . . . bones" and "smacked really hard," and they become more dependent on the SFB (or SFD). (Kennon Depo. Tr. 2/14/2019 at 47:13-48:13; Monreal Depo. Tr. 2/14/2019 at 29:6-13).

141. A district's bonding capacity is a function of the property wealth within the district. A district's statutory bonding capacity reflects the limit on bond indebtedness set by statute. Bonding capacity is set at 10% of a district's assessed valuation, less any outstanding bonds. (Trial Tr. 5/30/2024 at 42:19-43:4; Pl. Exh. 780 at 13; *see also* A.R.S. § 15-1021).

142. Massive differences in property wealth among districts cause significant differences in districts' abilities to issue bonds. (Trial Tr. 5/30/2024 at 40:17-41:1, 42:3-18; Pl. Exh. 780 at 12-18).

143. Examples of districts' disparate bonding capacities per pupil include:

- a. Riverside Elementary School District's statutory bonding capacity is \$79,764 per pupil, which is 36.8 times Gadsden Elementary School District's statutory bonding capacity of \$2,170 per pupil.
- b. Tempe Union High School District's bonding capacity is about 350%, or 3.5 times, greater than Yuma Union High School District's bonding capacity.
- c. Sedona-Oak Creek Joint Unified School District has about 50 times the bonding capacity as Douglas Unified School District.

(Trial Tr. 5/30/2024 at 40:17-41:1, 42:3-18).

144. The tax rates required to raise the same amount of money also vary greatly among districts. It costs lower-wealth districts more money than wealthier districts to raise the same amount of money per pupil. Examples of tax rate disparities among districts to raise \$100 per pupil include:

- a. Gadsden Elementary School District's tax rate of \$0.57 per \$100 of assessed valuation is 34.6 times greater than Riverside Elementary School District's tax rate of \$0.02 per \$100 of assessed valuation.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

- b. Yuma Union High School District's tax rate of \$0.08 per \$100 of assessed valuation is 3.1 times greater than Tempe Union High School District's tax rate of \$0.03 per \$100 of assessed valuation.
- c. Douglas Unified School District's tax rate of \$0.44 per \$100 of assessed valuation is 43.7 times greater than Sedona-Oak Creek Joint Unified School District's tax rate of \$0.01 per \$100 of assessed valuation.

(Trial Tr. 5/30/2024 at 43:5-44:2; Pl. Exh. 780 at 13-14 (Table 1); Trial Tr. 6/11/2024 at 92:2-11).

145. A district's access to bond funds is dependent upon the district's voters approving a bond request. Many bond and capital override measures are unsuccessful. From 2019 to 2023, the passage rate of bond and capital override elections was 69%--meaning that almost one-third of such requests failed. (Pl. Exh. 780 at 12).

146. The presence of taxable property within a district does not necessarily bear any relationship to the district's capital needs. The properties within a district that has substantial capital needs could have very little taxable assessed valuation. And whether the property within a district has very little assessed valuation can make a significant difference in whether the district can pass a bond and the cost of such a bond to the taxpayers. (Trial Tr. 6/11/2024 at 85:18-86:1).

147. Many small districts do not have the specialized staff needed to manage a bond request, and the work required for a bond request takes a disproportionately large portion of available staff time in small districts with fewer staff than larger districts. In addition, the costs of issuing bonds consume a higher percentage of the proceeds of a small bond issue than of a large bond issue. (Pl. Exh. 780 at 18).

148. Smaller districts tend to be in rural areas, where the economy can make it difficult to get an investment grade bond rating. The interest rate (*i.e.*, the cost of the bond) on a bond without an investment-grade rating is higher than a bond with an investment-grade rating. (Pl. Exh. 780 at 18).

149. Some districts with a history of success passing bonds have failed in recent bond elections. Between 2020 and 2023, 36 bond measures in the State passed, and 24 bond measures failed. In 2020, \$361.1 million in bond measures passed, and \$336.1 million failed. In 2021, \$215.5 million in bond measures passed, and \$421 million failed. In 2022, \$812 million in bond measures passed, and \$551.2 million failed. In 2023, \$2.45 billion in bond measures passed, and \$1.18 billion in bond measures failed. (Trial Tr. 5/30/2024 at 38:21-39:8; Trial Tr. 6/5/2024 at 7:3-22; Pl. Exh. 603 (first and fourth tabs)).



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

150. The passage rate for Maricopa County bond elections historically has been higher than for bond elections in other parts of the State, but that has changed in recent years. In this regard, from 2013 to 2023, 80 bond measures in Maricopa County passed, and 26 bond measures in Maricopa County failed--for a passage rate of about 75%. In other areas of the State during that same period, 44 bond measures passed, and 23 bond measures failed--for a passage rate of about 65%. For 2020 to 2023, the bond measure passage rate in Maricopa County significantly declined to about 59.5% (25 bond measures passed and 17 bond measures failed), and the bond measure passage rate for other areas of the State declined slightly to about 61% (11 bond measures passed and 7 bond measures failed). (Pl. Exh. 603 (fifth tab); Trial Tr. 6/5/2024 at 11:24-13:15).

151. The State recognized the disparity between districts with access to bond funds and those without when there is insufficient funding for the Building Renewal grant program. In this regard, the Fiscal Year 2019 Executive Budget Request described the impact of not funding the Building Renewal Grant Fund as follows:

Arizona's K-12 capital assets are aging and replacements on major systems such as roofs, mechanical systems, and building envelopes are more prevalent than in prior years. Not recognizing this trend not only places existing systems in peril, but also increases costs if corrective action is deferred.

If Building Renewal Grant funds are not appropriated for FY 2019, those school districts with voter-approved bond authority may decide to repair or replace systems with local funds, while those school districts that do not have sufficient bonding authority or choose not to use local funds will remain non-compliant with minimum adequacy guidelines. This will further increase the divide between economically advantaged and disadvantaged school districts, which is inconsistent with the decision resulting from *Roosevelt v. Bishop* (described below). Additionally, there may be a risk from health and safety hazards for students and school staff.

The SFB's Fiscal Year 2022 Budget Request contains a similar acknowledgment. (Pl. Exh. 9 at 31; Pl. Exh. 245 at 3).

152. Similarly, in November 2016, the SFB's then-Chair recognized the disparity between districts with access to bond funds and those without:

As the state mulls how to approach the *Students First*/Prop 301 renewal, which was designed to make school capital funding a state issue and less of a local responsibility, it should consider that the state for the most part is right back where it was before the *Roosevelt v. Bishop* lawsuit. The state

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

doubled bonding authority for school districts during the recession and ever since school capital issues have been predominantly funded at the local level, distorting spending equity across district (and charter) lines, leaving the state once again highly exposed to litigation.

(Pl. Exh. 87 at 5; McCarthy Depo. Tr. 2/28/2019 at 143:7-17, 144:6-145:3).

***Crane Elementary School District***

153. In 2014, Crane commissioned a firm (Arcadis) to assess all its facilities to address where it had deficiencies. Arcadis concluded Crane had more than \$50 million in capital needs. The needs included roofing, HVAC, concrete, plumbing, and electrical projects, all of which were covered by the MAG. (Trial Tr. 5/28/2024 at 31:15-32:8, 33:9-35:8, 37:3-11; Pl. Exh. 333 at 3).

154. Crane's bonding capacity in 2014 was only \$10 million. As such, even if it wanted to, Crane could not have addressed all its capital needs with bond monies. (Trial Tr. 5/28/2024 at 35:11-24).

155. Crane asked its voters to approve \$10 million in bonds for air conditioning, plumbing, electrical, and roofing projects. The voters approved the bond request, but Crane exhausted the bond funds within three years. (Trial Tr. 5/28/2024 at 39:2-40:5, 46:17-20; Pl. Exh. 335).

156. Between 2009 and 2023, Crane's DAA was cut by more than \$19 million from the DAA formula. In 2016, the cut was between 85% and 90% from the DAA formula. The restoration of DAA to the formula level helped Crane, but it was insufficient to address the cumulative cuts and the failure to adjust the formula for inflation. (Trial Tr. 5/28/2024 at 49:10-24, 86:5-22; Pl. Exh. 682).

157. Crane has asked its voters to approve bonds because it was unable to meet the MAG due to legislative budget cuts and the repeal of the BRF. Crane "sought support from [its] voters in order to help the district ensure that [its] buildings are environments that are safe and comfortable for students and staff to learn and grow in." (Trial Tr. 5/28/2024 at 20:22-31:7).

158. In 2023, Crane's voters approved another bond request for \$20 million. This bond request included funds for weatherization, roofing, HVAC, plumbing, and electrical projects. Crane made this bond request because State funding was insufficient for Crane to comply with the MAG. (Trial Tr. 5/28/2024 at 46:21-47:1, 58:22-59:10, 59:21-60:7; Pl. Exh. 678).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

159. In 2018, Crane also asked its voters to approve a DAA override. As a result of the significant cuts to DAA, Crane needed community support to address its soft capital needs, including transportation, safety and security, and technology. The safety and security needs addressed with the DAA override included implementing security cameras, one-button lockdown systems, and visitor management systems. The technology needs addressed with the DAA override included sustaining the Apple iPad program that had been gifted to the district. The voters approved the override. (Trial Tr. 5/28/2024 at 60:17-61:22, 132:7-133:15).

160. Crane's "biggest hurdle" in obtaining SFB funding is that there must be a "catastrophic" failure before such funding is available, which means that Crane has fallen below the MAG instead of maintaining compliance with the MAG, and such catastrophic failures result in "large disruption[s] in the classroom" and "displacing students." Using bond funds instead of Building Renewal grant funds (when such grant funds are available) to address facility deficiencies "provides [Crane] with flexibility to ensure that [it is] able to control when disruptions in the classroom take place, at the same time developing a proactive approach to address [its] needs." Moreover, by using bond funds to maintain compliance with the MAG instead of waiting for a MAG deficiency to occur to seek Building Renewal grant funds, Crane avoids potential liability that may result from items such as a leaking roof or defective flooring. (Ponder Depo. Tr. 2/28/2019 at 58:1-15; Trial Tr. 5/28/2024 at 40:11-41:14, 64:11-21).

161. Crane currently has MAG deficiencies with the roof and HVAC at Ronald Reagan Elementary School. Crane sought Building Renewal grant funding for these deficiencies, but it has not been approved due to the lack of funding for the program. The roofing project has been pending since 2021, and Crane had no assurance that the project would make the prioritization cut in September 2024. As such, Crane opted to use funds from its 2023 bond authorization to complete the project. (Trial Tr. 5/28/2024 at 71:23-72:15, 109:6-13, 249:23-251:24).

162. Crane would not be able to comply with the MAG without local bond money. And DAA override funds have been "essential" for Crane to meet its soft capital needs. Crane deems the facility and technology needs that were funded with local money to be essential to its recognition as a high-performing district. (Trial Tr. 5/28/2024 at 46:6-16, 109:14-20, 232:18-233:11).

***Tolleson Elementary School District***

163. Tolleson ESD has four elementary schools. All its students participate in the National School Lunch Program, and 95% of its students are students of color. (Trial Tr. 5/29/2024 at 108:6-109:8).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

164. Tolleson ESD's voters approved a \$24 million bond request in 2018 and a \$30 million bond request in 2023. Although the voters have approved bonds and overrides, the funds have not been enough to meet the district's needs due to the district's limited bonding capacity. (Trial Tr. 5/29/2024 at 109:25-110:24).

165. Tolleson ESD's bond and override funds have been "critical" to addressing the district's capital needs. The district has used bond and override funds to (among other things) purchase technology, instruments, uniforms, and buses; replace "very old and outdated" textbooks; renovate and expand buildings; and obtain software essential to the district's daily operations, purchase instruments. (Trial Tr. 5/29/2024 at 110:25-113:11).

166. Tolleson ESD will use the 2023 bond funds to renovate and weatherize buildings; to replace buses, HVAC units, roofs, and flooring; and to upgrade technology, fire alarms and security systems. (Pl. Exh. 748 at 3-4).

167. Without bond and override funds, Tolleson ESD would not be able to have full-time kindergarten, physical education, art, band, counselors, and athletics. (Trial Tr. 5/29/2024 at 112:21-113:11).

168. Tolleson ESD currently has 365 HVAC units that are failing and at the end of their life, but the SFD has approved only ten units for replacement through Building Renewal grant funding. As a result, the district uses M&O funds to pay for costly structural assessments and to place temporary air conditioning units in classrooms. It would cost the district \$6 million--about three years of its annual DAA allocation--to replace the failing HVAC units. The district ultimately will use 2023 bond money to replace the units. (Trial Tr. 5/29/2024 at 120:16-123:3, 125:3-13; Pl. Exh. 749 at 16-18).

169. In June 2023, the roof over Profirio Gonzales Elementary School's cafeteria collapsed--fortunately while no staff or students were inside. The district has not been able to use the cafeteria in the year following the collapse and instead used half of the school's gymnasium as a makeshift cafeteria. In December 2023, the SFD agreed to fund \$1.7 million to fix the roof, and the Risk Retention Trust is funding the remaining \$1 million. (Trial Tr. 5/29/2024 at 125:14-126:21, 127:15-128:16, 129:11-130:24, 131:18-132:8; Pl. Exh. 749 at 1-10).

170. The Risk Retention Trust did not want the SFD to fix the roof and instead "kept pushing" Tolleson ESD to use funds from the 2023 bond authorization to fix the roof. But those funds were not available until April 2024, when the bonds were sold. Moreover, Tolleson ESD knew that "as soon as [it] use[d] bond moneys, the State will never touch that building again" if it needed repairs because "the State will consider it excluded space." (Trial Tr. 5/29/2024 at 129:11-131:9).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

171. On June 6, 2023, after the roof collapse, Tolleson ESD applied for Building Renewal grant funds for an assessment of the gymnasium roof at the same school because “[t]here has been water penetration for months from storms” and “[t]he damage [was] creating safety issues for students.” This is the gymnasium that was being used as the makeshift cafeteria. The district ultimately made the repairs using local bond funds because “[i]t was going to be a very lengthy process, and [the district] needed to use that space for both cafeteria and gymnasium, and [it] didn’t know if it was going to go through or get approved.” (Trial Tr. 5/29/2024 at 135:16-137:5; Def. Exh. 952 at 1-2).

172. In November 2022, Tolleson ESD applied for Building Renewal grant funds for an assessment of the roof at Sheely Farms School because the roof “has had leaks and water penetration from storms for 18 months” and “is beyond repair and causing further damage to the facilities.” The SFD denied the request because it deemed the space to be excluded space, even though the district contends it is not. The district ultimately used its DAA funds to repair the roof, which it would not have been able to do without having local bond funds available. (Trial Tr. 5/29/2024 at 137:6-138:22).

173. Tolleson ESD would not be able to meet the MAG without local bond or override funds. (Trial Tr. 5/29/2024 at 160:25-162:15).

***Tolleson Union School District***

174. Tolleson Union High School District (“Tolleson Union”) covers more than 102.5 square miles and has more than 13,400 students. The district has seven high schools. The residential income within the district is in the lower socioeconomic status. (Trial Tr. 6/6/2024 at 9:12-24).

175. Tolleson Union’s tax base includes a significant amount of industrial property and the Westgate Entertainment District, which makes it easier for the district to pass bond authorizations despite its residents’ lower socioeconomic status. (Trial Tr. 6/6/2024 at 102:23-103:19).

176. In each of the eight years preceding trial, Tolleson Union’s voters have approved every bond, override, and site sale question put to them. (Trial Tr. 6/6/2024 at 12:1-11).

177. Due to its bond funding, Tolleson Union has renovated all its schools, added turf fields, added a performing arts center to one of its campuses, and significantly increased its teachers’ salaries. (Trial Tr. 6/6/2024 at 14:7-15:1).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

178. Tolleson Union's bond funding enables the district to move forward with facility projects even when the Building Renewal grant program is inadequately funded. "[I]f and when [the district] receive[s] building renewal grant funding for the projects, . . . [the district] can journal entry costs over." For instance, Tolleson Union recently had an approved roofing project that the SFD did not prioritize for funding. The district nevertheless moved forward with the project and "absorb[ed] those costs through bond while [the district] continue[s] to work with the SFB to seek building renewal grant funding." (Trial Tr. 6/6/2024 at 17:6-18:9).

179. Tolleson Union's bond funding gives it the luxury of being able to replace all the HVAC units on a campus when the units start to fail. Unlike other districts, Tolleson Union does not have to "wait[] for each one of those hundred of units to fail" and replace them one at a time. Tolleson Union also has the luxury of additional buses beyond the minimum number it needs so that if a bus breaks down, a spare bus is available while repairs are being made. (Trial Tr. 6/6/2024 at 20:13-21:8, 76:19-77:14).

180. As a result of its local bond and override funding, Tolleson Union exceeds the 1:1 device-to-student ratio on all its campuses. (Trial Tr. 6/6/2024 at 40:15-41:17).

181. In 2019, Tolleson Union built a high school on an accelerated basis because it was overcapacity in the current academic year. The SFB/SFD qualified Tolleson Union for \$48 million of funding for the new school. But the guaranteed maximum price for the school was \$109 million. Tolleson Union's bond funding enabled it to go forward with building the school. (Bakalis Depo. Tr. 2/27/2019 at 160:14-161:3; Trial Tr. 6/6/2024 at 14:7-15:1).

***Laveen Elementary School District***

182. In 2019, Laveen Elementary School District ("LESD") had eight schools, the oldest of which was about 20 years old. LESD had about 7,200 students at that time but projected a significant increase in enrollment. (W. Johnson Depo. Tr. 8/16/2019 at 10:24-11:17, 13:14-16).

183. The legislature's cuts to capital funding caused LESD to delay the replacement of school buses that were beyond their typical useful life, curriculum, and older technology. (W. Johnson Depo. Tr. 8/16/2019 at 20:17-21:5).

184. In 2008, LESD's voters approved a \$49 million bond request, but only \$18 million in bonds were issued. LESD used the 2008 bond funds to rebuild Laveen School and M.C. Cash School, make additions to Cheatham School, renovate Vista del Sur School, and complete support facilities at the Laveen Education Center. LESD rebuilt the two schools because "the ongoing cost of repairs and maintenance, and the utility costs, which were dramatically higher than they were

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

at other more modern or recently built schools.” (W. Johnson Depo. Tr. 8/16/2019 at 65:7-19, 67:13-19, 68:3-14).

185. In 2015, LESD’s voters approved a \$42 million bond request. LESD used part of the 2015 bond funds to replace buses that were beyond their useful life and had become very expensive to maintain. If LESD did not have the bond funds available, it would have had to spend M&O funds to continue repairing the old buses. (W. Johnson Depo. Tr. 8/16/2019 at 66:16-17, 85:12-13, 123:17-125:4).

186. In 2018, LESD’s voters approved a DAA override. (W. Johnson Depo. Tr. 8/16/2019 at 66:18-21).

187. LESD used its bond and override funds to: (i) enhance school safety and security; (ii) maintain the 1:1 student-device ratio; (iii) repair and replace infrastructure projects that were not yet eligible for SFD funding, including HVAC, flooring and mechanical lighting projects; (iv) replace buildings that “flooded every time that it rained” and “were full of asbestos”; (v) replace parts of a concrete sidewalk that was a tripping hazard; (vi) replace components of a fire alarm system to keep it functioning; and (vii) correct drainage and water flow issues to prevent classroom flooding during heavy rains. (W. Johnson Depo. Tr. 8/16/2019 at 51:4-23, 52:8-53:18, 69:14-71:10, 86:10-91:15, 93:15-94:12, 160:20-161:3).

188. LESD has a five-year capital plan that provides for the replacement of aging building components on a schedule rather than waiting for failure. (W. Johnson Depo. Tr. 8/16/2019 at 27:16-28:4, 28:22-30:11).

189. LESD used its local bond and override money to address the cumulative effect of the legislative cuts to public school capital funding, which effects included delayed replacement of aging buses and outdated curriculum and technology. (W. Johnson Depo. Tr. 8/16/2019 at 21:6-20).

190. LESD used its DAA override money to continue doing preventative maintenance on its facilities when the legislature cut Building Renewal funding. (W. Johnson Depo. Tr. 8/16/2019 at 50:19-21).

191. LESD uses local bond and DAA override funds “to comply with the minimum guidelines and keep kids in school” and “to take intermediate measures to keep the space occupiable, and safe, appropriate for kids” while LESD goes through the process of obtaining SFB/SFD funding for a system failure, such as a failed HVAC unit. In this way, LESD’s use of local money ensures that the district does not fall out of compliance with the MAG while waiting

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

for the SFB/SFD funding process to play out. (W. Johnson Depo. Tr. 8/16/2019 at 22:5-23:1, 33:2-34:17, 105:25-106:15).

192. LESD has opted to use local bond and DAA override monies to replace systems before they fail because: (i) “some of the systems if they fail . . . will interrupt the education of the students and/or create an unhealthy, unsafe situation”; (ii) “it is just a lot more economical and efficient than waiting for it to fail and then having to go in and replace the full system”; and (iii) “[s]ometimes . . . systems are interrelated, and if you let one system fail, it can cause additional costs for other related systems as well.” (W. Johnson Depo. Tr. 8/16/2019 at 130:6-131:4).

193. Systems that, if they fail, can interrupt the educational environment include air conditioning, plumbing fixtures, fire alarms, security systems, electrical systems, and roofs. (W. Johnson Depo. Tr. 8/16/2019 at 130:21-131:4).

194. LESD’s DAA override money is an important factor in the academic achievement of LESD’s students. In this regard, LESD is part of a lower socio-economic community, and many of LESD’s students do not have access to technology and other resources except through school. Without these resources, “not only would [these students] start out their life behind, but they would stay behind.” In addition, LESD’s use of DAA override money on technology has enabled the district to replace textbooks that “were over ten years old and . . . grossly out-of-date.” As such, LESD views technology as “not a luxury” but instead “something that [its] students need and deserve in order to be successful.” (W. Johnson Depo. Tr. 8/16/2019 at 146:21-149:1).

195. The State’s current capital funding system for public schools causes disparities among districts--those with access to local bond and override money, on the one hand, and those without access to such funds, on the other hand. LESD is fortunate to be among the districts with access to local funds. LESD’s superintendent described the disparity as follows:

Because school districts like Laveen that are growing, that have the support of their communities to pass overrides and bonds, that have enough debt capacity to actually issue bonds are able to have adequate facilities that we do, that meet the needs of students, that are safe, are healthy, provide a positive environment for students to succeed versus school districts that are not in that same situation.

There [are] schools in the state that were built 50, 60, 70 years ago that in my professional opinion need to be replaced rather than repaired, and I don’t see -- I don’t see any opportunity in the system for that to ever happen unless the building is in immediate danger of collapsing or falling down.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(W. Johnson Depo. Tr. 8/16/2019 at 155:13-156:9).

***Other School Districts***

196. The record includes evidence of other districts that are fortunate to have access to local bond and override funds to make repairs to their facilities when State funding is not available and without waiting for the facilities to fall below the MAG. Examples of such districts include Chandler Unified School District, Phoenix Elementary School District, and Madison Elementary School District.

**Districts Without Access To Local Funds**

197. The preponderance of the evidence established that school districts without access to local bond and override funds--because of a lack of adequate property wealth and/or unsupportive voters--languish with substandard facilities for years.

***Elfrida Elementary School District***

198. Elfrida does not receive adequate capital funding from the State to meet its needs. (Brand Depo. Tr. 4/5/2019 at 105:8-21).

199. Because of the insufficiency of capital funding, Elfrida had to triage its facility maintenance needs and delay some projects. Some items that Elfrida was unable to do because of the lack of funds included replacing classroom carpeting, purchasing textbooks, painting buildings to keep the surfaces intact and in good condition, repairing the cafeteria roof, and fixing safety issues on playground equipment. (Brand Depo. Tr. 4/5/2019 at 10:22-11:17, 106:21-107:8).

200. Elfrida's facilities are outdated and have not been updated in 25 years, as attested to by a current teacher who attended Elfrida Elementary School as a student 25 years ago. The roof at Elfrida Elementary School is deteriorating and leaks when it rains. The leaks disrupt the learning environment because students stop what they are doing to position trash cans to collect the dripping water. In a "Band-Aid" approach, the leaking areas of the roof are patched, but the roof invariably leaks in another location the next time it rains. (Trial Tr. 6/3/2024 at 17:16-19:12, 23:24-24:6; Pl. Exh. 885 at 3-5).

201. Elfrida also is experiencing problems with its heating and cooling system, which forces the district to choose between: (i) leaving the air conditioning on during the cold morning temperatures; or (ii) turning off the air conditioning in the morning and not being able to sufficiently cool the classrooms in the afternoon. The students either must bear freezing cold temperatures in the morning or exceedingly warm temperatures in the afternoon. The district notices a drastic change in student behavior whenever the classroom temperatures are too cold or

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

too hot, which affects their learning. In the winter of 2023, when a couple of thermostats failed, Elfrida had to relocate students to other classrooms due to insufficient heating in the building. (Trial Tr. 6/3/2024 at 14:10-15:9).

202. Elfrida's school lacks reliable power and experiences power outages every month or two. The power outages often affect only the school, not the surrounding community. In the 2023-2024 school year, Elfrida had to dismiss students early on a couple of occasions because the district was unable to restore power at the school in a timely manner. Power outages negatively impact the district's ability to educate its students. (Trial Tr. 6/3/2024 at 15:10-16:8).

203. Elfrida regularly experiences toilet and plumbing issues at its school. Toilets do not flush properly, often requiring multiple flushes, and the water continues to run. Overflowing water in sinks and toilets frequently leads to classroom disruptions, which negatively impacts the learning environment. (Trial Tr. 6/3/2024 at 16:9-17:15).

204. Elfrida does not have a gymnasium for its students. As such, the district must use the high school gymnasium--which use is subject to limited availability. In 2013, Elfrida applied for a grant to build its own gymnasium because its students were not able to have physical education out of inclement weather (including snow, rain, and wind) and practices for team sports had to be held in the high school gymnasium after dark at night, which creates safety issues for students returning to school from home for practice. In 2013, when Elfrida submitted its grant application, the projected cost for the gymnasium was \$2,992,650. Elfrida does not have the ability to pass a bond to pay for a gymnasium. At the time of trial, 11 years later, Elfrida still did not have a gymnasium. The lack of a gymnasium negatively impacts Elfrida's learning environment. (Trial Tr. 6/3/2024 at 18:13-19:10; Brand Depo. Tr. 4/5/2019 at 20:5-23:17, 59:19-60:1; Pl. Exh. 119; Pl. Exh. 123 at 15; Def. Exh. 609).

205. The high school gymnasium that Elfrida uses is cooled by evaporative coolers and has large cracks in the roof and walls. (Trial Tr. 6/3/2024 at 23:3-17; Pl. Exh. 886).

206. Elfrida currently does not offer a music program for its students because the building that houses the music room has been condemned. A tree fell on the roof, and mold developed because of the ensuing roof leaks. Notably, Arizona's academic standards include music instruction for all grade levels. (Trial Tr. 6/3/2024 at 20:24-22:18; Def. Exh. 609; Pl. Exh. 433).

207. The pipe covers on the outside of Elfrida's school building are deteriorating and appear to be in poor condition. (Trial Tr. 6/3/2024 at 20:19-23; Pl. Exh. 885 at 5-6).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

208. Elfrida lacks appropriate facilities for ill students. As such, the district places ill students on a cot behind the superintendent's secretary's desk. This makeshift setup lacks privacy and exposes other people in the office to students who may be running a fever. (Brand Depo. Tr. 4/5/2019 at 38:9-39:18; Pl. Exh. 123 at 1).

209. Elfrida's school has gravel parking lots that get very muddy when it rains and pose a tripping hazard. In 2015, Elfrida submitted a Building Renewal Grant Application to pave the parking lots. The SBF denied funding for the project because a gravel parking lot was deemed to be within the MAG. (Pl. Exh. 121; Brand Depo. Tr. 4/5/2019 at 44:6-45:18).

210. As shown in the photograph below, the water from the faucets in Elfrida's elementary classrooms is discolored and cloudy. When teachers and students complained about the water, teachers were told "just to kind of run it for a while in hopes that it would clear out a little bit or have the kids bring water from home to drink." The local well company advised that "it was not anything that was going to hurt them and that it was just ugly looking."



(Brand Depo. Tr. 4/5/2019 at 53:3-22; Pl. Exh. 123 at 4-5).

211. Elfrida has limited technology for its students. The district does not have textbook curriculum and instead uses online resources. But the district does not have a device for every

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

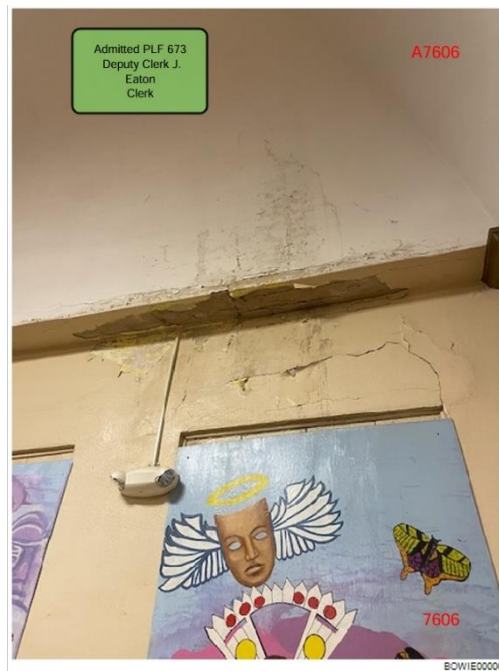
08/11/2025

student. As such, Elfrida's students must share devices and do group work. In addition, Elfrida's internet is unreliable and goes out two to three times per month. The duration of the outages varies from 10-15 minutes to the entire day. The internet outages are disruptive and negatively impact the students' learning environment. (Trial Tr. 6/3/2024 at 11:6-12:22, 13:10-14:3).

***Bowie Unified School District***

212. Bowie Unified School District ("Bowie") is a small rural K-12 school district in Cochise County. It has approximately 65 students divided into a K-8 school and a 9-12 school. Bowie is a low socio-economic district, with about 75% of its students qualifying for free or reduced lunch. About one-third of Bowie's students are English language learners. (Trial Tr. 6/5/2024 at 79:22-80:13).

213. Bowie currently needs three new roofs on its schools. One of those schools is A.R. Spikes High School, which was built in 1922 and has 17 identified roof leaks. As shown in the photograph below, the roof leaks have caused significant damage to the auditorium's interior ceiling and wall. The estimated cost to replace the roof at this school is \$1.25 million.



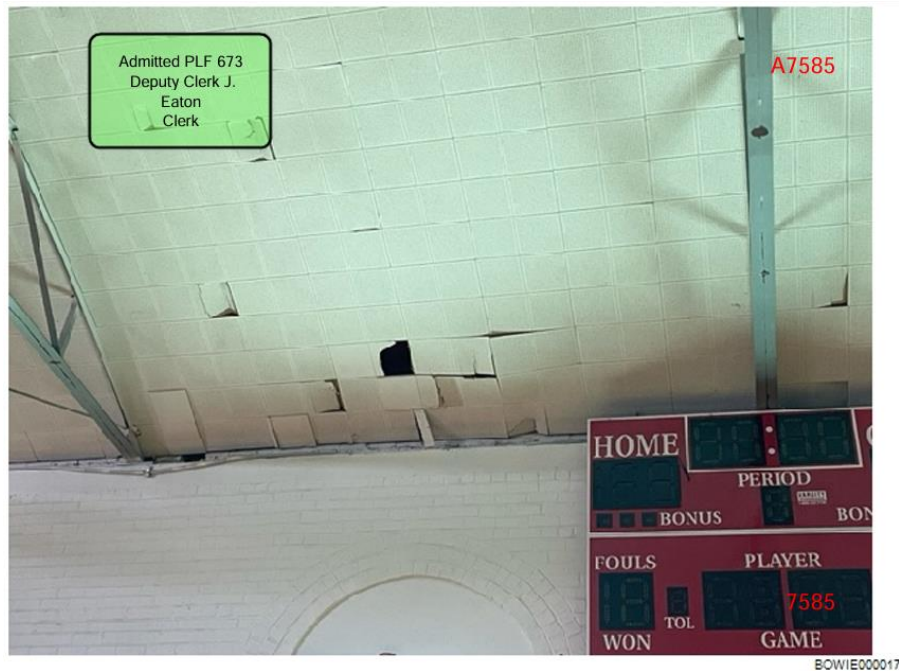
(Trial Tr. 6/5/2024 at 82:20-83:7, 91:23-92:8; Pl. Exh. 673 at 25).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

214. The second roof that Bowie needs to replace is on the Bruce Brown Gym, which was built in 1940. Around August 2022, a heavy monsoon storm damaged the roof, and rain poured through the roof onto the gymnasium's bleachers. As shown in the photographs below, the roof leaks have caused extensive damage to the gymnasium's interior ceiling as well as significant cracking in the brick wall. The estimated cost to replace this roof is \$1.98 million.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



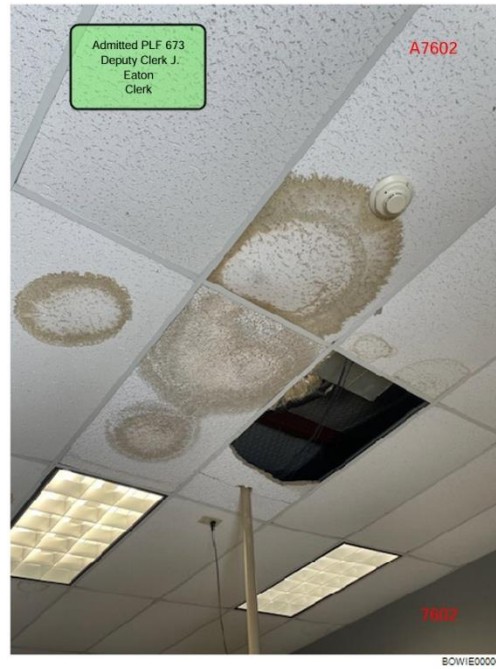
(Trial Tr. 6/5/2024 at 82:20-85:19, 87:20-88:15; Pl. Exh. 674; Pl. Exh. 673 at 3-4).

215. The third roof that Bowie needs to replace is on the agriculture building, which houses the district's machine shop and welding program. As shown in the photograph below, the roof leaks have caused significant damage to the interior ceiling tiles. During heavy rains, the agriculture teacher places a large trash can or janitorial bucket beneath the leaks to catch the water dripping into the classroom. The estimated cost to replace this roof is \$472,000.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Trial Tr. 6/5/2024 at 82:20-83:7, 90:19-91:21; Pl. Exh. 673 at 21).

216. Bowie lacks security fencing around its campus. (Trial Tr. 6/5/2024 at 86:5-17).

217. On June 23, 2020, following an assessment of Bowie's facilities, an architectural firm member wrote to Governor Ducey, the ADOA's director, and certain legislative members asking that "immediate attention and funding be provided to correct the current conditions that exist." The architecture firm's assessment reflects that "the buildings at Bowie are in extremely bad shape and in some cases beyond repair." The assessment identifies several major deficiencies with Bowie's facilities, including those set forth above, and concludes:

"... [N]o child should be subjected to the current conditions that exist. I have seen several of the schools across our State that the SFB has rebuilt over the years and I do not know why Bowie was not one of them. Yes, they are a rural campus with a small population, but the students deserve better and we must correct the current situation.

(Pl. Exh. 675).

218. By the time of trial, about four years after the architectural firm sent its assessment to the State, most of the deficiencies with Bowie's facilities had not been corrected. The roofs still



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

leak, there is no safe roof access, the campus lacks security fencing, and the buildings still have structural issues. (Trial Tr. 6/5/2024 at 106:7-107:1).

219. Bowie applied for Building Renewal grant funding to replace the roof at A.R. Spikes High School in July 2021, and to replace the other two roofs in July 2023. The projects have cleared the assessment and design phases, but Bowie received a letter from the SFD advising that the SFD is out of money to fund the projects. As such, Bowie decided to hold off pursuing funding until it can get updated quotes. Bowie intends to submit the updated quotes at the beginning of fiscal year 2025. (Trial Tr. 6/5/2024 at 88:15-90:11; Pl. Exh. 684 at 1).

220. Bowie's state funding is insufficient for the capital projects set forth above. Bowie receives about \$1.6 annually from the State for its M&O budget, which it uses for salary and benefits, curriculum, supplies and materials, utilities, and other daily operations. At the time of trial, Bowie had about \$177,000 of unrestricted capital remaining. "Even if [Bowie] took [its] remaining maintenance and operations budget and combined those two together, [Bowie would] have about \$700,000"--which "doesn't come anywhere near the [\$]4.2 million that [it] need[s] for fencing and three roofs." (Trial Tr. 6/5/2024 at 99:17-102:10).

221. Despite Bowie doing its best to use the State's Building Renewal grant system to address its capital needs, the State has failed to provide Bowie's students with a minimally adequate facility. (Trial Tr. 6/5/2024 at 100:9-17).

***Snowflake Elementary School District***

222. Snowflake Unified School District ("Snowflake") is a rural K-12 district serving the communities of Snowflake and Taylor in northeastern Arizona. The district has six campuses and a district office complex. Snowflake and Taylor each have their own elementary schools, and the district has a junior high school and a high school that serve the combined communities. Snowflake is a rapidly growing district with a ten percent growth rate in recent years. About 16% of the district's students are special education students. (Trial Tr. 6/3/2024 at 138:16-139:7, 139:14-140:2, 140:17-23).

223. Snowflake is located in Navajo County, which is one of the poorer counties in the State and the country. Snowflake's residents are in the lower to medium income range. The district depends on the State for most of its funding because the community's property value is insufficient to support the district with local funding. (Trial Tr. 6/3/2024 at 140:3-16).

224. The last bond approved by Snowflake's voters was in 2007. The bond's purpose was to accommodate growth in the district. The voters also approved a bond in 2000. Snowflake's \$18 million bond proposal in 2023, which was aimed at adding classrooms and renovating the



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

“really run down” junior high locker rooms and gymnasium, failed. (Trial Tr. 6/3/2024 at 141:2-142:1, 148:4-22).

225. Snowflake’s superintendent believes the district “probably [will] have to” ask the voters again to approve a bond soon to accommodate the district’s growth. But bonds have not proved to be a reliable source of funding for Snowflake. And Snowflake’s DAA allocation is insufficient to build additional classroom space because the district’s total allocation is about \$1.1 million, which “doesn’t go very far” toward building additional space. Snowflake also lacks capacity in its M&O budget to build additional classroom space. (Trial Tr. 6/3/2024 at 149:9-150:8).

226. After “multiple years” and “quite some time” of requesting funding for additional space, the SFD recently approved funding for five additional classrooms. But the formula funding approved by the SFD is “not even close” to the amount needed to construct the additional classrooms. The SFD approved funding of \$317 per square foot, and the lowest bid was \$370 per square foot. And “close to 20 percent of [the approved funding] comes out for development and design costs.” After accounting for furniture, fixtures, equipment, and fees, the amount of SFD funding available for actual construction costs is about \$260 per square foot. (Trial 6/3/2024 at 142:8-143:15, 240:9-241:15).

227. Snowflake’s architects are doing “value engineering”--which entails reducing the design and changing to less expensive options--to minimize the construction costs and complete a “barebones” project. An example of a value engineering concession is using sheetrock instead of slump block for the building’s exterior. Although the district does not yet “know exactly how much [it will] have to pay out of district funds, . . . it looks like it will be significant.” Snowflake anticipates using M&O funds to make up some of the shortfall, which will reduce the district’s ability to hire and retain employees. (Trial 6/3/2024 at 142:8-144:9, 146:23-147:21).

228. While awaiting funding from the SFD for the additional five classrooms, Snowflake has “done everything [it] can” to accommodate its growth. The district’s efforts included “turn[ing] a storage room into a classroom” and “buil[d]ing a wall and turn[ing] [a corner of a library] into a classroom.” In short, Snowflake has “maxed out every corner and nook and cranny on both those [junior high and high school] campuses to find classroom space.” (Trial Tr. 6/3/2024 at 141:12-142:7).

229. Without local bond funding, Snowflake does not (and will not) have space to accommodate its growing number of students. Even though the SFD funding for five additional high school classrooms “will give [the district] a little breathing room,” the district “still [has] major concerns at the junior high and some of [its] elementary schools as well.” Indeed, the five additional classrooms will not “be enough to accommodate the actual student growth [in the]

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

district moving forward” if the district “continue[s] to have the growth that [it has] experienced the last couple years.” (Trial Tr. 6/3/2024 at 147:22-148:3, 148:23-149:8).

230. To address its struggles to find necessary classroom space, Snowflake was considering adding portable classrooms at one of its elementary schools beginning in the fall of 2024. But the SFD will not fund portable classrooms, so the district would have to pay the cost of adding portable classrooms out of its existing budget. (Trial Tr. 6/3/2024 at 248:18-249:14).

231. Snowflake also considered busing students from “an elementary school in Snowflake that’s very overcrowded” to attend school in Taylor. But after spending “six months looking at every option of reconfiguring transporting kids back and forth,” Snowflake determined that “[w]ithout a bond, it was impossible.” The district “had a plan in place, if the bond passed, to set [the district] up for years to come.” As set forth above, however, the voters did not approve the bond request. (Trial Tr. 6/3/2024 at 150:15-151:14).

232. Snowflake receives insufficient State funding to: (i) keep its building and building systems in good shape and working condition; and (ii) maintain its facilities in compliance with the MAG, including keeping roofs in good working order. (Trial Tr. 6/3/2024 at 151:15-21, 175:8-12, 178:10-15, 253:24-254:4).

233. In 2009, Snowflake received \$1.6 million in soft capital (DAA) and Building Renewal funding from the State. When the legislature funded DAA below the statutory formula, “that number dropped and dropped.” By 2018, Snowflake’s DAA allocation was only \$146,000 to pay for buses, computers, and athletics in a district with six campuses, 2,800 students, and 300 employees. Although the DAA has been “fully restored,” Snowflake’s DAA allocation for 2024 was \$1.1 million--half a million dollars less than its allocation 15 years earlier in 2009. (Trial Tr. 6/3/2024 at 172:6-25).

234. Snowflake has taken steps to reduce its expenses and to be efficient in its operations. In this regard, the district evaluates whether a position is necessary whenever an employee leaves the district. The district eliminated custodial staff in the district office, and district administrative employees do their own cleaning. (Trial Tr. 6/3/2024 at 235:14-236:3).

235. Snowflake has experienced delays in resolving its capital issues through the Building Renewal grant process. For projects that get approved, it usually takes three to four years to complete the project. (Trial Tr. 6/3/2024 at 152:5-14).

236. For instance, Snowflake experienced problems with a gymnasium HVAC unit for ten years. The unit is a 50-by-15-foot unit referred to as a Mammoth because of its size. It is a unique unit, and there is not anyone “in the entire northern region of the state that is qualified to

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

work or repair on that unit.” In 2021, the unit completely failed, and the district had no heating or cooling in the gymnasium. As a result, during August, students played volleyball matches in “uncomfortable and unsafe” 90-degree temperatures. During basketball games in the winter months, “it was extremely cold” and “people were bundled up in coats and just not very comfortable.” Students “were practicing at 5:00 a.m. in frigid temperatures indoors.” (Trial Tr. 6/3/2024 at 152:21-154:2, 154:6-11; Pl. Exh. 744 at 4).

237. In September 2021, Snowflake applied for Building Renewal grant funding for the failed Mammoth HVAC unit. The project assessment reflects that the unit has been failing “[o]ver the last couple years,” “is over 16 years old and is in complete failure.” “[N]oteworthy conditions” included that: (i) the “unit [was] susceptible for replacement due to the wear of the equipment components” and its age; (ii) “R22 refrigerant is obsolete, is no longer legal to manufacture and the only available R22 refrigerant is via reclaim from replaced air conditioning equipment which is very expensive, if available”; (iii) the unit “is technologically challenging to maintain” because “any qualified technician or support company is hours away from the site” and “long lead items for replacement and the weeks-to-months delays in getting proper technical support”; and (iv) “retro-fitting and[/]or re-building of this unit is costly and the life expectancy of the unit will be past it [sic] time.” As such, the assessing contractor recommended replacing the unit with multiple smaller units utilizing a more basic configuration. But the SFD’s guidelines for the Building Renewal program only allow “replac[ing] like for like.” As a result, to qualify for Building Renewal funding, Snowflake had to replace the unit with a similar custom-made Mammoth unit at a cost of about \$1.4 million and significant further delays. The project took about three years to complete. (Trial Tr. 6/3/2024 at 154:6-25, 156:9-160:25, 164:4-11, 212:21-213:23, 244:25-245:19; Pl. Exh. 746 at 4, 9).

238. Snowflake’s entire high school campus is cooled by a cooling tower. In August 2023, about two weeks before the start of the new school year, the cooling tower’s bearings failed. Because the area was experiencing above-average temperatures of about 100 degrees, Snowflake unsuccessfully sought emergency funding through the SFD. As a result, Snowflake had to spend its own funds for emergency repairs, even though the SFD will not reimburse a district when it spends its own funds. (Trial Tr. 6/3/2024 at 166:1-167:4).

239. Snowflake is in “a holding pattern” on the replacement of the failed roof on the high school’s auditorium/cafeteria. The SFD denied Building Renewal grant funding for the project because the facility is deemed “non-classroom” excluded space that is ineligible for Building Renewal grant funding, even though the high school’s music and art classrooms are housed in the building and the overcrowded elementary school next door uses the auditorium for its music classes. The district considers the auditorium to be necessary for educating its students. (Trial Tr. 6/3/2024 at 167:5-168:13).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

240. Snowflake sought Building Renewal funding to renovate the junior high school's "locker rooms off of a very tiny gym that's also used as a cafeteria for the school." The gymnasium is not safe, and competitions cannot be held there. The locker rooms are the only ones on campus and house the only restrooms for the school's physical education classes and for use by the sports teams. Due to the very poor condition, the district put up a wall on the auditorium stage to create a makeshift dressing room for 7<sup>th</sup> grade students, and turned a large building used for wrestling into a dressing room for the 8<sup>th</sup> grade students. Neither facility has any lockers or privacy. The SFD denied funding for the project, which it deemed to be a "cosmetic" issue. Snowflake lacks its own funds to renovate the locker rooms. (Trial Tr. 168:14-170:14).

241. In the summer of 2023, Snowflake applied for Building Renewal funding to correct MAG deficiencies in its facilities. Except for some approved roofing projects, the projects "have just been sitting there" without being approved. These include a drainage project and concrete projects that the district considers to be safety issues. Snowflake does not know whether there will be funding for these projects in future years. (Trial Tr. 6/3/2024 at 226:3-227:11, 245:20-246:25).

242. Snowflake lacks sufficient State funding for its soft capital needs, such as buses, technology, and curriculum. For instance, the district spent ten years looking for new reading curriculum, but it lacked sufficient DAA funds to adopt it. Snowflake purchased reading curriculum for grades K-3, but it lacked funds to purchase the curriculum for grades 4-8. (Trial Tr. 6/3/2024 at 171:17-172:5, 178:16-18, 184:4-11, 254:5-8).

***Blue Ridge Unified School District***

243. Blue Ridge Unified School District ("Blue Ridge") is a rural district serving about 1,675 students around the Pinetop-Lakeside area in northeastern Arizona. Blue Ridge is a pre-K - 12 district with three schools--an elementary school, a junior high school, and a high school. The district's facilities are old, with the oldest facilities dating back to the 1960's and the newest facility built 20 years ago. (Trial Tr. 5/29/2024 at 219:1-3, 220:12-24, 228:16-229:6).

244. In 2016, Blue Ridge's voters approved a \$16 million bond request. Blue Ridge used: (i) \$1.2 million of the bond funds to remediate an ongoing flooding issue in front of the elementary school; (ii) \$2 million for its auditorium; (iii) a substantial amount of the bond funds for computers and technology to achieve a 1:1 student-device ratio; (iv) about \$1.9 million to replace about 14 buses in its 35-year-old fleet; (v) about \$2 million to convert an old storage facility into an elementary school; and (vi) a couple million dollars to convert an old middle school building being used as a warehouse into a "nice proper learning environment" for its junior high students. The district also used bond funds to make safety-related renovations and to resurface a cracked track that had become a safety hazard. (Trial Tr. 6/3/2024 at 50:17-53:11; Trial Tr. 5/29/2024 at 231:13-232:5).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

245. The funds from the 2016 bond were important to Blue Ridge. The visiting locker room at one of the schools had mold in the structure, and the urinals were ripped off the wall. And the elementary school regularly flooded. The superintendent described the facilities as “like . . . a third-world country.” The district would not have been able to fix these issues without the bond funds. (Trial Tr. 6/3/2024 at 53:12-54:13).

246. The \$16 million from the 2016 bond was insufficient to address all Blue Ridge’s capital needs. The district estimated it needed between \$30 and \$32 million to address all its capital needs. (Trial Tr. 6/3/2024 at 56:5-11).

247. In 2023, Blue Ridge sought a bond request of \$12 million. But the voters did not approve the request. The district planned to use the bond funds to address its aging bus fleet, refresh its technology, and make safety and security enhancements. With the bond failure, and because the district is moving existing capital funds into M&O to maintain its day-to-day operations, all these items will be deferred. (Trial Tr. 6/3/2024 at 56:12-57:15).

248. Blue Ridge receives about one-third of the funds required to cover its capital needs through DAA. In 2015, Blue Ridge’s DAA allotment was cut to only \$124,000 to support the soft capital needs of a district with 2,000 combined students and staff. Even with its DAA restored to between \$900,000 and \$950,000 annually, Blue Ridge’s DAA allocation is insufficient to keep up with its soft capital needs and facilities repairs. For instance, the cost to replace a single bus has increased from about \$135,000 when the district replaced buses in 2016 or 2017 to about \$250,000 currently. (Trial Tr. 6/3/2024 at 57:23-58:8-59:17).

249. When addressing difficulties with the Building Renewal grant process, Blue Ridge’s superintendent has found it necessary to become “very assertive, aggressive, [and] persistent”--“especially in a small district” where he is “advocat[ing] for [the] students and community needs.” For example, when the SFB denied Blue Ridge’s request for Building Renewal grant funding to weatherize its high school buildings in 2016, the superintendent contacted legislators for assistance. The superintendent’s efforts ultimately were successful, and the school was weatherized. (Trial Tr. 5/29/2024 at 222:14-226:18; Pl. Exh. 85).

250. The front of Blue Ridge’s elementary school experienced serious flooding when it rained since at least 2014. The SFD’s district liaison assigned to Blue Ridge admitted that “[i]n the summer when it’s raining, when it’s icy, because this is a very cold area, it’s a real hazard to try and navigate.” But there was not much the liaison could do except suggest the district try to obtain “adjacent ways” funding, because Building Renewal grants do not cover parking lots. As indicated above, Blue Ridge used about \$1.2 million of its 2016 bond funds for civil engineering “to redirect the water away from the building, out and away from the building.” In short, the district constructed “a large culvert that separates the school from the parking lot.” The

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

superintendent described the culvert as “sort of a country fix that is “not . . . ideal,” but “you do what you can with what you have” and “it has reduced some of the standing water, certainly.” The district also installed fencing around the culvert area so that it does not create a trip hazard. (Trial Tr. 5/29/2024 at 227:24-228:15, 234:25-236:12; Trial Tr. 6/11/2024 at 211:17-213:5).

251. Blue Ridge has been experiencing problems with the foundation and floor settling at its elementary school for many years. The problem began with “a superficial crack” around 2015. The floor and one of the walls have moved, and the floor now is raised “upwards of an inch or two.” The problem has not been resolved in the 3 ½ years since Blue Ridge began the formal Building Renewal grant process for this project. The fissures are a trip hazard. The photographs below show the condition of the flooring in 2020--before the condition worsened:



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Trial Tr. 5/29/2024 at 229:7-230:3, 234:4-24; Trial Tr. 6/3/2024 at 42:12-43:1; Pl. Exh. 308).

252. In 2019, the SFB approved Blue Ridge’s request for Building Renewal funding to replace the roof on the high school’s gymnasium. But the project was delayed due to lack of SFB funding. In May 2021, after waiting two years, Blue Ridge followed up with the SFB about the project, expressing its concerns that: (i) “[t]he rooftop is in disrepair and shelters over \$1,000,000 worth of hardwood flooring”; and (ii) “given the roof’s failure, the walls of these structures are suffering water intrusion, and we fear mold will soon prevail in these buildings if not correctly remediated promptly.” Six months later, after not receiving a response, the district followed up again. On December 20, 2021, the SFD liaison assigned to Blue Ridge responded:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

Due to present funding before any other supplemental bids are granted, the district should hold off on bidding this project for now. You're welcome to bid this out in early summer and submit the construction project in the next FY which starts July 1. That way you'll know the bids will not have to held [sic] longer than typical so the pricing should be more stable.

(Pl. Exh. 309; Trial Tr. 6/3/2024 at 44:19-48:15; Pl. Exh. 292 at 2).

253. On December 28, 2021, Blue Ridge responded to the SFD liaison about the delayed funding for the high school gymnasium roof project:

. . . We have been waiting for three years to get this done. Dave Kennon told us over two years ago when we did the main gym roof that he would do the rest of it that year, then came back and told us there was no funding available. That cost the tax payers [sic] approx. \$500,000.00 by delaying it due to the crazy construction inflation costs.

We cannot do this large of a project in the fall due to the short time frame between monsoon seasons and the first winter snow. We've already had a large portion of the gym roof blow off during a monsoon storm due to the fact they are 25+ years old and beyond their life expectancy. This cost our insurance company a good chunk of change to remediate water damage inside the gyms.

Ultimately, after significant delays, the roof project was completed. (Pl. Exh. 292 at 1; Trial Tr. 6/3/2024 at 48:16-49:11).

254. In the fall of 2023, Blue Ridge experienced another roofing problem at its elementary school that required the district "to move an entire grade level to a different part of the campus because of water intrusion and flooding." During a storm, part of the roof separated from part of the wall, "and a lot of water came in." The district patched the roof for years. Blue Ridge requested Building Renewal funding to correct this deficiency, but at the time of trial it remained pending. (Trial Tr. 6/3/2024 at 49:14-50:10; Trial 5/29/2024 at 236:13-25).

255. At the time of trial, Blue Ridge had around 43 active capital projects on hold due to lack of SFD funding. Although Blue Ridge attempts to patch leaking roofs while the district awaits funding, "it comes to a point [when] hundreds of patches . . . on a pretty large, expansive roof . . . start[s] to leak . . . more regularly and more significantly in certain areas, and it's a function of the roof failing." Moreover, even if the SFD funds these projects with the fiscal year 2025 appropriation, there is not sufficient time for Blue Ridge to complete the projects during the summer before students return to campus for the new school year. (Trial Tr. 5/29/2024 at 230:6-231:8, 238:17-240:1).



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

256. The SFD denied Building Renewal grant funding to replace failed HVAC units. The failed units included a 25-year-old HVAC unit with a bad coil system that services the girls' locker room at the high school. The unit was beyond its life expectancy, and parts are no longer available for the unit. (Trial Tr. 6/3/2024 at 131:15-133:24).

257. Blue Ridge does not receive sufficient State funding to meet its soft capital needs, such as buses, books, and technology, and to keep its facilities above the MAG. (Trial Tr. 6/3/2024 at 67:16-25, 136:2-14; Trial Tr. 5/29/2024 at 220:25-221:10).

***Mohawk Valley Elementary School District***

258. Mohawk Valley is a small rural district in the farming community of Roll, Arizona, with only one elementary school serving K-8 students. The superintendent also serves as the school's principal. (S. Johnson Depo. Tr. 8/13/2021 at 7:23-8:4, 11:12-15).

259. Since 2000 or 2001, Mohawk Valley has not received sufficient State funding to cover its necessary capital expenditures. The district has facilities "in dire need of repair." (S. Johnson Depo. Tr. 8/13/2021 at 130:16-131:8).

260. With the cuts in DAA funding, Mohawk Valley was receiving about \$70,000 per year in DAA funding. The district uses that funding first on its major expenses, such as its bus payment, and then the district decides what other capital items or projects it can fund with the remaining money and what items need to be deferred. The district must "make decisions between curriculum and bathrooms and carpet and bussing and tires, and sometimes it is hard to decide which one is most important." (S. Johnson Depo. Tr. 8/13/2021 at 100:11-101:2, 144:24-146:3, 148:22-149:16, 151:2-24).

261. Mohawk Valley's limited DAA funds, even after restoration of DAA funding to the statutory formula, are insufficient for the district's capital needs. For years, the district lacked any projectors in its classrooms, and no teacher had their own computer. And the district had not replaced any curriculum in 15 to 20 years. (S. Johnson Depo. Tr. 8/13/2021 at 132:21-134:10).

262. Although Mohawk Valley's website touts that the district is "proud to offer such great facilities for [its] students to use and enjoy," Mohawk Valley's superintendent put that statement into perspective:

... So we have great facilities in the sense that we take care of what we do have until they no longer function.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

We are as clean as we can be in the circumstances. We have a beautiful lawn. We have smiling faces that are in these facilities. So in that respect, that is my perspective, but we are a facility that is breaking, that is the walls are crumbling behind the scenes and, you know, things are not working under the surface.

But if you walk into my office today, it is happy. It looks friendly. It is painted. But if you look closely at the windows, they are dirty. They are leaking. You go to another room the windows are -- it is gross. By the time the teachers come back in the summer, it is so dirty, but on the surface the teachers decorate their classrooms. . . .

We keep it clean. We keep the cobwebs off. We do the best that we can. That is what I consider a great facility, but our facilities are broken. We have more than I ever dreamed as we have done assessments, lots of problems behind the scenes, plumbing, windows, and locks that don't work, and the list goes on.

(S. Johnson Depo. Tr. 8/13/2021 at 26:1-28:6).

263. The restrooms at Mohawk Valley's school were in serious disrepair since before 2014, and they were "[c]ontinually getting worse." They remained in serious disrepair for many years. The ceramic tile in one restroom "popped up" due to water damage, the restrooms in the main building had cracks in them, and the 50-year-old partitions had fallen. The SFD's liaison for Mohawk Valley described the serious black mold condition in one of the restrooms: "That's the one where when I got to see it, all the tile was taken up. There was black mold underneath. There was black mold along the walls. The urinals and the toilets were covered. It was disgusting, for lack of a better way to put it." The photographs below show the condition of the restroom:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(S. Johnson Depo. Tr. 8/13/2021 at 35:24-38:17, 51:18-52:6; Trial Tr. 6/12/2024 at 61:24-64:7; Pl. Exh. 272 at 1; Pl. Exh. 268 at 4, 10).

264. Mohawk Valley’s staff attempted to “maintain [the restrooms] with the little minimal funds that [it had.]” Although the restrooms required an \$80,000 renovation, the district did not have the funds to complete such an extensive project. As such, the district did the best it could with the funds it had by “go[ing] to Lowe’s and buy[ing] a toilet when the toilets go out. . . .” (S. Johnson Depo. Tr. 8/13/2021 at 35:24-38:17).

265. In August 2019, Mohawk Valley submitted a Building Renewal grant application to repair the restrooms. The application described the restrooms as follows:

The boys and girls [sic] bathrooms are no longer safe and barely usable. Stall dividers are barely hanging and have been repaired as best as can be and have torn metal pieces exposed. Some sinks are broken or not existent. The faucets leak and break, causing dangerous conditions. Several urinals no longer work or continually run creating a flooded floor. Toilets are not of commercial grade and do not flush properly. Baseboards are gone. Vents are broken. Some plumbing does not work. Bathrooms are not handicap accessible.

(S. Johnson Depo. Tr. 8/13/2021 at 175:4-25; Pl. Exh. 279 at 1).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

266. On September 4, 2019, the SFB voted to deny Mohawk Valley's Building Renewal grant application "because preventative maintenance is inadequate and ADA accessibility is not yet required as there are currently no students for which accommodation is needed." (Pl. Exh. 265 at 1; S. Johnson Depo. Tr. 8/13/2021 at 52:9-54:5).

267. One of the SFD/SFB's liaisons for Mohawk Valley confirmed that the district was "doing the very best [it] could trying to get this [restroom] project done." Although Mohawk Valley's superintendent described one of the liaisons as "helpful," she also expressed her frustration with the inability to get information from the liaisons when Building Renewal grant funding was denied: "Things are denied. She will say: I don't know why it has been denied. They won't tell me. That is the SFB. I am just here to tell you that it was denied." (Trial Tr. 6/12/2024 at 64:17-22; S. Johnson Depo. Tr. 8/13/2021 at 57:2-58:8).

268. In 2019, after the district's attempts to get Building Renewal grant funding for some projects were rejected, Mohawk Valley requested voter approval of a \$1.5 million bond because "piecemealing it" through the Building Renewal grant program "was just not working." Mohawk Valley's voters approved the request with a 51% favorable vote. The SFD/SFB liaison assigned to the district described the superintendent's decision to seek bond funding in lieu of Building Renewal grant funding as "very resourceful" and noted that "she's also learned about this and wants to help other districts in similar issues." (S. Johnson Depo. Tr. 8/13/2021 at 45:23-47:20, 52:9-54:5, 179:23-180:13; Trial Tr. 6/12/2024 at 51:6-52:8).

269. Mohawk Valley used some of its bond funds to hire third-party vendors, including Arcadis, to identify projects for which Building Renewal grant funding is appropriate and to assist the district with its applications to obtain such funding. (S. Johnson Depo. Tr. 8/13/2021 at 38:18-40:6).

270. In April 2021, with assistance from Arcadis, Mohawk Valley submitted another application for Building Renewal grant funding to fix the restrooms. Notably, the restrooms' condition had worsened since the initial denial of Building Renewal funding in 2019. The application described the current deficient state of the restrooms as follows:

The existing three restrooms in the mail building (1930 & 1996 renovations) are in a failed state. The urinals in the boy's restroom leaked into the walls and have been closed off. The flooring structure is damaged and has a large crack in the foundation. In certain times of the year a fungal-type mushroom plant grows up where the foundation meets the wall.

Partitions are broken, unrepairable, and well beyond their life span and are not ADA compliant. Both boy's and girl's restrooms have broken toilets

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

and sinks that are not safely secured to the wall. The walls are in need of repair that securing the sinks and partitions will require proper backing and blocking.

The plumbing in all three restrooms are cast iron pipes in the walls, roof vents, and drains. The plumbing in the crawl space under the floor has been replaced by ABS in some instances. We are experiencing regular clogging of drains which leads us to believe that some of the cast iron plumbing is in dire need of repair. We have recently had an insurance claim to replace cast iron plumbing that broke in a custodial closet of the main building.

The boy's and girl's student restrooms in the primary wing (the 300 building) are in dire need of repair. These restrooms have cast iron plumbing in the walls and underground that are failing. We regularly have issues with clogged drains. There have been numerous repairs to the plumbing and restrooms through the years.

The restroom walls, flooring, plumbing, and fixtures are now beyond simple repairs, and a major renovation is required. The partitions in the boy's restroom were rusted and were removed due to the unsafe condition and new backing will need to be installed. The tile flooring in the boy's restroom lifted and cracked due to excessive water damage from broken sinks, toilets, and urinals.

At this time, this restroom has no flooring, no partitions, only one barely functioning sink and only one functioning urinal, the others are closed off. The girl's restroom has homemade wooden partitions that are many years old and in need of repair and broken toilets and sinks.

The student restrooms in the intermediate/jr. high wing (200 building) are in dire need of repair in order to create a safe and sanitary environment for students and comply with ADA. The partitions are homemade wooden partitions that are coming lose [sic] from the walls. These partitions and walls are beyond repair without major renovations. The sinks are coming lose [sic] from the walls and toilets and urinals are broken. The cast iron plumbing was replaced in these restrooms in 2016, so they are not experiencing plumbing issues like the other restrooms.

The students [sic] restrooms in the gym are the original from the 1996 build. The sinks and countertops are in dire need of repair due to years of use and water damage. Toilets and urinals are also broken and in need of

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

replacement. The flooring has water damage and is need [sic] of replacement.

In short, the plumbing is deteriorated and non-functioning in all the restrooms noted. The surfaces are non-compliant in that the floors are not structurally sound, and the walls are incapable of continuing in their use with normal maintenance and repair for the next 3 years as required in A.A.C. R7-6-271.

Major renovations are required to conform with ADA and SFB Minimum Adequacy Guidelines for students.

The projected cost for the recommended restroom renovation was \$750,000. (Pl. Exh. 278 at 7-9).

271. The foundation of Mohawk Valley's school has sunk, causing cracks in the floors and walls. (S. Johnson Depo. Tr. 8/13/2021 at 99:7-12).

272. In May 2021, with Arcadis' assistance, Mohawk Valley submitted another Building Renewal grant application to correct "failed conditions and deficiencies" in flooring that "does not meet minimum SFB Guidelines and does not comply with ADA guidelines" and "State Health standards." The application described the flooring deficiencies as follows:

Carpeting is separating at the seams, is unrepairable, and well beyond its life span. The transitions at the doorways are not ADA compliant and present a trip hazard. Ceramic tile is broken and cracked in many areas and the vinyl flooring is lifting and separating as well. The flooring is now beyond simple repairs, and a major renovation is required. The main entrance to the campus and all the classrooms (from the outside walkway into the classroom) are not ADA compliant.

Major renovations are required to comply with Arizona Administrative Code (R7-6-271). Flooring surfaces in areas described are currently not capable of continuing their intended use with normal maintenance.

The projected cost for the recommended flooring repairs was \$762,858.00. The photographs below show some of the flooring conditions at the time of the application:



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025





SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Pl. Exh. 277 at 3, 5, 6, 10, 18, 23).

273. The windows in Mohawk Valley's school have not been changed since the school was constructed in the 1960's, and "[t]hey are in dire need of repair and replacement." The windows are broken and cracked, and they are not sealed, allowing dirt to seep through the windows. (S. Johnson Depo. Tr. 8/13/2021 at 28:15-29:1).

274. Mohawk Valley's school has doors with locks that are too old to replace anymore. The exterior wooden doors swell, causing them to leak dirt and sometimes water. The district has shaved portions of the doors to allow them to close when there is high humidity. "The weather

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

stripping is long, long gone,” and many of the doors have broken hinges. (S. Johnson Depo. Tr. 8/13/2021 at 35:24-36:17, 92:21-93:12).

275. The school’s walls are peeling, have holes in them, are deteriorating in areas, and need weatherization. In the school’s main building, “the elements from the outside have made its [sic] way into the inside and created damage.” The exterior of the school has not been painted or weatherized since the district had bond money available in the mid-1990’s, the school has experienced water intrusion through the windows, doors, and walls for years. The photograph below shows the condition of the wall inside one of the school’s classrooms:



(S. Johnson Depo. Tr. 8/13/2021 at 92:21-94:13, 170:18-25; Pl. Exh. 274).

276. In February 2021, again with Arcadis’ assistance, Mohawk Valley submitted an application to begin the design phase of a Building Renewal grant to correct deficiencies in weatherization of its school. The assessment included with the application provides:

Mohawk Valley contracted with Arcadis, who has performed RILEM tube testing and provides this document that demonstrates that the exterior walls are allowing moisture into the building and provides recommendations to correct these deficiencies in accordance with current SFB Guidelines.

There is observable evidence that the exterior doors and windows are not of a weathertight condition and allow water and dust to infiltrate the classroom spaces, especially in the violent monsoon storms encountered in the area. The existing windows are original (1930 & 1996) and offer no energy value

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

should be [sic] replaced. The existing doors do not fit properly in their frames and allow the elements to intrude into classrooms around the frames and between the door and frames.

The projected cost of the recommended weatherization project was \$1.5 million. The photographs below show some of the weatherization deficiencies at the time of the application:





SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Pl. Exh. 267 at 11, 14, 17, 19, 28, 33).

277. The roofs on Mohawk Valley’s school are more than 30 years old, “have not been replaced in years and years and years,” and are beyond their useful life. The roofs are losing shingles and have been leaking for years. The roofs are not compliant with the MAG. (S. Johnson Depo. Tr. 8/13/2021 at 35:24-37:2, 41:13-42:3, 43:25-45:1).

278. The fire alarm at Mohawk Valley’s school has major electrical issues and has worked sporadically for many years. The school also does not have an intercom system or a reliable phone system, particularly when it rains. This is a safety issue for the district’s students and staff. (S. Johnson Depo. Tr. 8/13/2021 at 97:17-98:8).

279. Mohawk Valley has its own water treatment plant. Although the district received funding to repair the plant, within two years after those repairs were completed in December 2014, the district again experienced “periods of high turbidity and [] had to increase [its] daily maintenance and operation of the plant in order to keep the turbidity low, keep the chemicals within safe limits, and maintain the pumps and equipment within the plant.” “[T]he gravel media ha[d] left one of [the] filters and entered the potable water holding tank.” As such, in April 2016, Mohawk Valley asked the SFB to provide funds “for a pre-sedimentation basin or appropriate filtration system for the initial intake of raw water” at the plant “to have a continuous supply of clean, safe drinking water for [the district’s] students.” (S. Johnson Depo. Tr. 8/13/2021 at 18:3-5; Pl. Exh. 373 at 1).

280. Mohawk Valley repeatedly asked the SFB for assistance with the water treatment plant, but the SFB delayed the project. For instance, the SFB suggested that the district “take water out of the atmosphere and put panels all over [its] campus.” The district attempted to follow the suggestion until the district board decided it was “absolutely nuts,” which delayed the project by

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

several months. The district then attempted to move forward with an assessment from an engineering firm, but the SFB required the district to go back to the procurement process. The SFB also wanted the district to pursue USDA loans instead of State funding for the project. (S. Johnson Depo. Tr. 8/13/2021 at 115:14-117:3, 118:19-119:19).

281. While the water treatment plant project was being delayed, chemical tests performed at the school produced failing results, and the Arizona Department of Environmental Quality informed Mohawk Valley that its water was unsafe for students to wash their hands--let alone to drink. The district was required to post “Boil Water Advisories” and signs warning that the water was unsafe to drink or consume. At the suggestion of state agencies, the district obtained an estimate of \$70,000 per month to haul in safe drinking water. The district ultimately resorted to ordering bulk water deliveries, installing temporary handwashing stations, boiling water to operate its kitchen, and setting up coolers of drinking water outside. (S. Johnson Depo. Tr. 8/13/2021 at 122:9-123:21, 166:6-170:12; Trial Tr. 6/12/2024 at 17:12-18:18, 61:3-12; Pl. Exh. 273; Pl. Exh. 275; Pl. Exh. 276; Pl. Exh. 270).

282. The issues with Mohawk Valley’s water treatment plant and the “temporary” solutions while the plant was being fixed still were ongoing when the district’s superintendent was deposed in this case on August 13, 2021. At that time, the district hoped the project would be completed by the summer of 2022. At the time of trial in June 2024, the first phase of the water treatment plant project was completed, which allows the students now to wash their hands. But the plant still “has to be tended to daily.” A second phase of the project to rectify the remaining issues was in the design phase. In fairness, although the SFD/SFB contributed to the nine-year delay in the project as set forth above, some of the delays were due to supply-chain and other issues beyond the SFD/SFB’s control. (S. Johnson Depo. Tr. 8/13/2021 at 127:12-16; Trial Tr. 6/12/2024 at 16:14-19:19, 51:6-13).

***Holbrook Unified School District***

283. Holbrook Unified School District (“Holbrook”) is a rural district located adjacent to the Navajo Nation along I-40 between Flagstaff and Gallup, New Mexico. The pre-K-12 district spans 1,500 square miles and serves 1,800 students. It has one school on the Navajo Nation, and four other schools--including two elementary schools, a junior high school, and a high school. About 63% of the district’s students are Native American, and 40% of the students live on the Navajo Nation. (Trial Tr. 6/4/2024 at 101:13-102:7).

284. Holbrook’s unique challenges include student transportation, given the large geographic size of the district, and “hiring staff that want to come to Holbrook, Arizona, to teach. . . .” Increasing costs, including health and property insurance costs, are an issue for the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

district, and the “[c]ost of bringing in . . . employees to get housing is a major factor” in “just keeping operations going effectively.” (Trial Tr. 6/4/2024 at 102:8-24).

285. Holbrook is “a high-poverty district” with “low funding in terms of assessed valuation and ability to levy taxes on [its] property owners.” The district does not “have a lot of capacity to generate a lot of revenue through [its] local property tax [sic] owners,” and it is “very reliant on federal funding, Title 1.” Holbrook has “the highest tax rate already in Navajo County for school districts.” (Trial Tr. 6/4/2024 at 103:6-104:7).

286. Hulet Elementary School (“Hulet”) is Holbrook’s oldest school. Hulet has “gone through a system of decay,” and the district believes the school is at the end of its useful life. Notably, Hulet is listed on the SFD’s “Building Watch List” as being “beyond useful life.” (Trial Tr. 6/4/2024 at 104:8-21; Pl. Exh. 304 at 1).

287. Hulet began experiencing issues with a cracked wall several years ago. “It started out pretty small, and then it’s progressively grown” to the point that it is very noticeable. Holbrook has attempted to repair the cracking with caulk, but “it just continued to resurface.” The photograph below shows the cracked wall:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Trial Tr. 6/4/2024 at 104:8-105:6, 114:8-16; Pl. Exh. 360).

288. Hulet has cracked walls “throughout the school” leading to the discovery of water intrusion and decay “on a regular basis.” “The brick is very old and crumbling. . . .” The photographs below show the condition of the walls and the damage resulting from the water intrusion:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

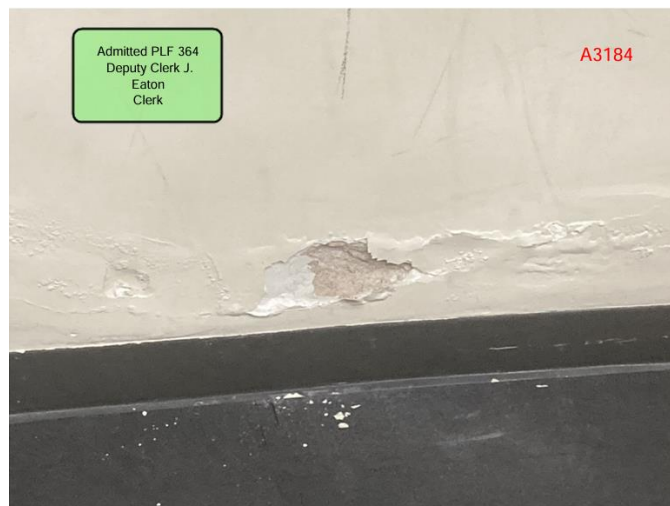
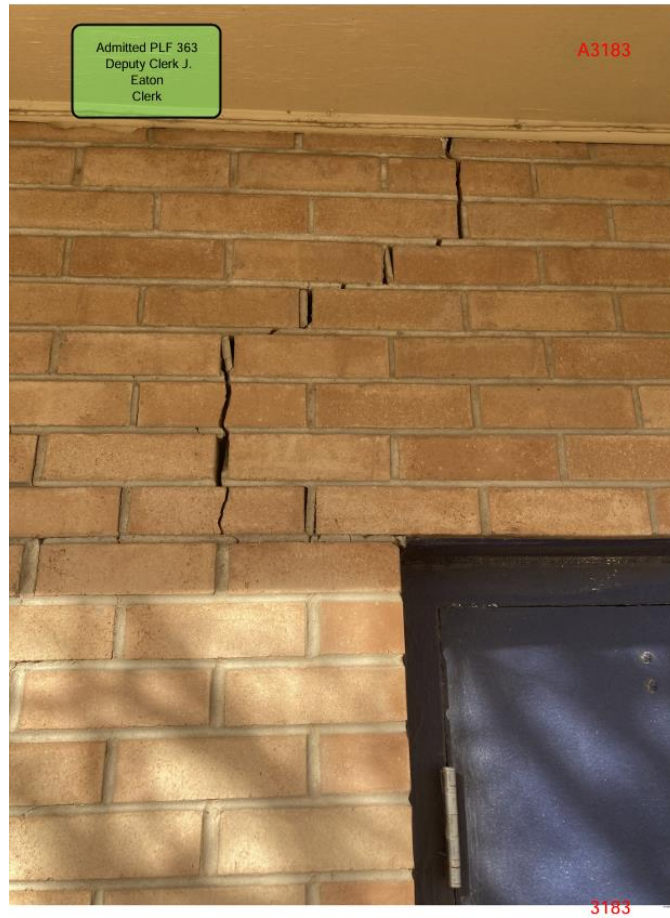




SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

(Trial Tr. 6/4/2024 at 112:24-115:20; Pl. Exh. 358-364).

289. Holbrook obtained two assessments of Hulet's walls--one prepared for the SFB, and one prepared for Holbrook's insurance company. The assessment for the SFB, which was prepared in April 2021, included a site observation and structural evaluation. The assessment provided two options for correcting the deficiencies: (i) repair and replace portions of the walls; or (ii) tear down and replace the entire structure. The assessment concluded: "Based on our observations and evaluations and due to the extent of the items to be removed and replaced, we recommend that the entire structure be removed and replaced." (Pl. Exh. 639 at 6; Trial Tr. 6/4/2024 at 107:4-110:12).

290. The cracked walls at Hulet affected the academic environment at the school because repairs required the school "to displace [its] preschool students and some of [its] special education students for a period of time, and [the school] had to actually combine them all into one classroom, which was not the best environment because [the school has] high-needs, preschool and special education students." (Trial Tr. 6/4/2024 at 126:25-127:23).

291. Holbrook attempted to address weatherization at Hulet, but when the district tried to obtain bids as part of the procurement process, the district "found that nobody really wants to tackle that building because of the conditions of the building." (Trial Tr. 6/4/2024 at 104:12-106:17).

292. In November 2022, Holbrook's architects advised the SFD about "several substantial issues" they encountered in the process of designing weatherization for Hulet. These issues included: (i) "[t]he soil conditions are such that we will have to install Helical piers to support the footings before we can even get the footings poured"; (ii) "the drainage of the water around the entire building"; (iii) "[e]xisting exterior steel building columns supporting the roof structure . . . shows [sic] signs of significant rust/deterioration, and will likely need to be replaced"; and (iv) "the existing brick will not allow for the typical applications of the coatings used to seal the exterior of the building" because "the existing brick is so deteriorated, and the makeup of the brick is such that it would do more harm to seal it than to leave it open, which is not an option because of the issue of moisture penetrating the existing brick." As a result of these issues, "every contractor that [the architects] have discussed this project with will NOT entertain even working on it, no matter the cost. . . ." The architects estimated they "would be looking at around 10 to 15 million dollars to repair the exterior of this building, and if we were to continue with this process you are going to have a new exterior with a 60-year-old interior, including electrical, mechanical, and plumbing." (Pl. Exh. 850 at 1; Trial Tr. 6/4/2024 at 121:6-123:13).

293. Another "major concern" with Hulet is that all its classrooms are cooled by swamp coolers. The swamp coolers on the roofs "can't keep up with the temperatures to have . . . mid-

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

to low-70s set points.” “So [the district has] to bring in additional swamp coolers that [it] put[s] in the classroom, and then sometimes [the district] even need[s] to have a fan or two in the classroom just to get the temperature to a conducive environment that [its] kids are able to learn, and teaching and learning can occur.” The use of fans in classrooms creates safety concerns. Indeed, one student’s hair was caught in an oscillating fan when she got too close to it. (Trial Tr. 6/4/2024 at 104:12-106:2, 127:12-129:17).

294. At the time of trial, Holbrook was in the construction phase of replacing the swamp cooling in one wing of Hulet and the gymnasium with HVAC units. The district obtained \$2.5 million of funding from the Building Renewal grant program for this project. But two other wings at Hulet are not being addressed by that project. (Trial Tr. 6/4/2024 at 117:14-119:22).

295. Rather than spending \$2.5 million on the HVAC project for part of Hulet, Holbrook’s preference is to combine Hulet and Park Elementary School into one school, which would save the district short-term and long-term capital costs as well as HR costs. But that would require additional space at Park Elementary School. Holbrook currently is “about seven to nine classrooms short” of “the building capacity to move all of the students to Park Elementary School in an environment in which that would be conducive to learning” considering “class sizes and special education classrooms.” Because Holbrook did not “have a definitive answer for what [it] could do with Hulet,” the SFD and Holbrook made “a joint decision that we needed to move forward with some phase of” the HVAC project. (Trial Tr. 6/4/2024 at 117:14-118:23, 125:13-21, 185:24-186:14).

296. Holbrook currently has several Building Renewal projects that are on hold due to lack of funding. These projects include: (i) a drainage project at the high school that is in the middle of the design phase; (ii) weatherization projects at the high school, the junior high school, and Park Elementary School; (iii) a quad design project at the junior high school; and (iv) roof repairs at Indian Wells Elementary School. Holbrook has no assurance that it will receive funding for these projects in the next fiscal year. (Trial Tr. 6/4/2024 at 134:17-135:9, 190:5-191:4).

297. Holbrook does not have a realistic alternative to the Building Renewal grant program for the larger capital projects addressed above. Holbrook does not “have the budget capacity to do some of the work that are really minimum guideline work, roofs and . . . the drainage and the quads designs and the things that are just functional parts of running [its] school system in a safe and orderly environment.” Local bond funding is not a viable option for Holbrook. (Trial Tr. 6/4/2024 at 136:24-138:4, 191:25-193:4).

298. In short, the State has not provided adequate funding to address Holbrook’s capital needs. (Trial Tr. 6/4/2024 at 138:5-12).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

***Glendale Elementary School District***

299. In 2016, GESD began working with the SFB to find a process to replace several schools the district believed had exceeded their useful life. The schools are over 50 years old and have experienced structural issues such as cracked foundations and flooring. (Trial Tr. 6/6/2024 at 194:16-195:21).

300. In 2016 or 2017, the SFB executive director and SFB board members and staff conducted a site visit at some of the schools. Although GESD and the SFB/SFD have held discussions about the schools, and GESD has used its best efforts to resolve the issues over the past eight years, the issues still remain and “have only gotten worse over time.” (Trial Tr. 6/6/2024 at 195:22-196:24).

301. William C. Jack Elementary School (“Jack Elementary”) was constructed in 1958. GESD “believe[s] the cost of renovation to bring the space up to current standards for the 21<sup>st</sup> century instructional space exceeds the costs of replacement.” (Trial Tr. 6/6/2024 at 199:25-200:14).

302. In 2016, the SFB approved Building Renewal funding to install shoring at Jack Elementary to address the foundation “just crumbling.” The shoring consisted of “steel plates or steel beams drilled into the walls of the buildings . . . to improve the structural integrity of . . . those buildings.” The shoring “was meant to be a short-term solution while [GESD] collaborated with the SFB to find a long-term solution to some of these challenges.” But the shoring remains in place today--nine years later. (Trial Tr. 6/6/2024 at 198:15-202:5; Pl. Exh. 526 at 4).

303. Don Mensendick Elementary School (“Mensendick Elementary”) was constructed in 1966. Harold W. Smith Elementary School (“Smith Elementary”) was constructed in 1952. As with Jack Elementary, GESD believed that the cost of renovating Mensendick Elementary and Smith Elementary to bring them up to current standards would exceed the cost of replacing the schools. The SFD approved funding for GESD to complete assessments of the schools. (Trial Tr. 6/6/2024 at 202:6-205:13; Pl. Exh. 528; Pl. Exh. 527).

304. In 2022, GESD obtained an assessment of Jack Elementary and Mendensick Elementary. The assessment “determined that the ongoing problematic condition to site and buildings are unable to be repaired and meet minimum standards” and “recommend[ed] that both campuses be demolished, and new educational space be constructed with either post-tension slab or deep pier foundations” which “would allow for new construction over the existing soils.” The preliminary cost analysis was that it would cost \$17.6 million to replace Mensendick Elementary and \$17.7 million to replace Jack Elementary. (Pl. Exh. 355 at 3, 10; Trial Tr. 6/6/2024 at 205:15-209:15).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

305. The assessment of Jack Elementary and Mensendick Elementary provided:

Therefore, we can state with confidence that the 2016 repairs were ineffective and the existing site soil conditions are not able to be remediated to allow for typical foundation repairs. Therefore, staff is unable to keep the existing Buildings manageable as required by Arizona Administrative CODE Title 7, chapter 6 codes (see next page).

Even if statute and relevant regulations were waived and the campuses were repaired yet again, it is still doubtful the buildings would meet minimum compliance with the 1997 Uniform Building Code (UBC) code as dictated by the AA Code (authoritative state direction).

(Pl. Exh. 355 at 8; Trial Tr. 6/6/2024 at 208:16-209:7).

306. The assessment for Smith Elementary found significant structural damage at the school. Although the damage could be repaired, it would be costly. The preliminary repair budget for Smith Elementary was \$7.7 million. (Pl. Exh. 356 at 5; Trial Tr. 6/6/2024 at 209:16-212:15).

307. Based on the recommendations in the assessments, GESD sought funding from the SFB to demolish and replace Jack Elementary and Mensendick Elementary with new school facilities. GESD's rationale for the request was:

Looking at the minimum adequacy guidelines and understanding the structural criteria, if you will, you know, we believe because they had outlived their useful life, that it required the replacement of those schools. . . . We believed then and we believe now that our students should be in buildings that are safe and not below minimum adequacy guidelines.

In 2022, the SFB denied GESD's request. (Trial Tr. 6/6/2024 at 212:166-213:25).

308. GESD lacks State funding to follow the recommendations in the assessments for Jack Elementary, Mensendick Elementary, and Smith Elementary. GESD estimates that, including everything that comes with a new school, it will cost about \$65 million to replace Jack Elementary and Mensendick Elementary--which the SFD concedes have exceeded their useful life. Even if GESD used all its Revenue Control Limit and DAA funds, which is not a realistic option, the district would not have sufficient funds "to replace those two schools completely while continuing to operate and meet its mission of educating kids." (Trial Tr. 6/6/2024 at 214:1-215:9).

309. GESD would have used local bond funds to replace Jack Elementary and Mensendick Elementary if the district had adequate bond capacity. But GESD recognizes that

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

option, even if it were available, has significant consequences: “[I]f [the district] were to use bond dollars to replace a school or schools, that space now becomes invisible space and currently [the district] would not then be allowed in the future to seek any type of applications, like in the building renewal grant, to correct any potential future deficiency.” (Trial Tr. 6/10/2024 at 117:4-20).

310. GESD has declining enrollment. As the district loses students, the district loses State funding. (Trial Tr. 6/10/2024 at 215:10-16).

311. Because of the declining enrollment, GESD closed five schools in 2021 to “right size” the district and “be as efficient as [it] possibly can under the circumstances.” Closing the schools presented logistical challenges, including adjusting 17 different school boundaries and increased student transportation needs. (Trial Tr. 6/6/2024 at 216:24-218:5).

312. Having recently closed five schools, GESD wants to avoid closing Jack Elementary and Mensendick Elementary. The two schools collectively serve about 1,700 students, and the district “could not relocate those students to other schools that are currently open without then running into capacity issues at those other schools.” Closing Jack Elementary and Mensendick Elementary would present other logistical challenges for the district, including increased transportation for students who would be attending school five or six miles away from their current school. (Trial Tr. 6/6/2024 at 218:6-220:17).

313. In 2023, GESD asked its voters to approve a budget override and a \$40 million bond. GESD proposed the bond to fund construction and renovation of school buildings, facility improvements, and the purchase of buses, school lots, furniture, equipment, and technology. GESD’s bond pamphlet explained the district’s justification for the bond request:

Since 2016, GESD has petitioned the State of Arizona to meet its capital needs by funding projects such as weatherization, drainage, roof repairs, and replacement schools. In some cases, GESD’s requests have been met with resistance. To address this inequity and to meet the needs of students, staff, and the community, the district is seeking support for a bond authorization.

(Trial Tr. 6/10/2024 at 112:16-115:10; Pl. Exh. 686 at 5).

314. GESD requested the DAA override to provide funds for safety and security infrastructure, updated technology, hardware and software, information technology infrastructure, textbooks, instructional aids, library books, vehicles, furniture, and equipment. GESD explained its justification for the override request:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

From 2009 through 2021, the State cut GESD's capital funding by approximately \$38.5 million. Although the State has increased funding to public education in recent years, GESD has yet to be made whole from these deep cuts to its capital funding. Therefore, the district seeks your support. . . .

(Trial Tr. 6/10/2024 at 114:10-116:15; Pl. Exh. 686 at 29).

315. GESD has had to ask its voters to approve local funding due to insufficient funding from the State for the district's capital needs. (Trial Tr. 6/6/2024 at 194:7-15).

***Ajo Unified School District***

316. Ajo Unified School District ("Ajo") is a small district with one campus built in 1954 or 1955, which serves about 420 students from preschool to 12<sup>th</sup> grade. (Dooley Depo. Tr. 4/18/2019 at 6:5-12, 14:1-2).

317. A significant number of Ajo's students are from low-income families. The average annual income for a family of four in the district is \$24,000. Many of the district's residents have been unemployed since the local mine closed in 1985. As a result, Ajo does not have the ability to access local funds through an override or bond. Although the district has not recently asked its voters to approve a bond, the district's override request failed by a 2-1 margin. (Dooley Depo. Tr. 4/18/2019 at 8:25-9:15, 25:18-26:12, 64:17-65:11).

318. Ajo does not receive sufficient State funding to meet its capital needs. When the legislature cut DAA funding from 2008 until 2018, Ajo lost about half of its annual DAA allocation. (Dooley Depo. Tr. 4/18/2019 at 60:20-61:6, 67:24-68:18, 74:15-75:5).

319. Ajo has not been able to keep up with changes in technology. Ajo's technology is outdated. During the Obama administration, Ajo received a technology grant of about \$1 million. But the grant funds have been used and are no longer available. (Dooley Depo. Tr. 4/18/2019 at 13:19-14:17, 72:22-73:18, 74:12-75:2).

320. Ajo's facility lacks playground perimeter fencing, the partitions in the restrooms are missing or deteriorating, the gym shows evidence of a water leak, and the building foundations are deteriorating. Ajo has not painted its facility since at least 2002 due to lack of funding. As such, paint is peeling off the exterior of the building. (Pl. Exh. 143; Dooley Depo. Tr. 4/18/2019 at 69:14-72:4).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

321. In 2017, a rusted steel pipe caved in and created a large sinkhole measuring two to three feet in diameter and four to five feet deep in the middle of Ajo's campus. Ajo's maintenance director attempted to remedy the problem by filling it in with "some old cement bags . . . and some rocks and dirt." Within a month, the sinkhole was back and eventually spread to four areas. (Dooley Depo. Tr. 4/18/2019 at 42:19-43:19).

322. Ajo requested Building Renewal grant funding to fix the sinkhole. Although the SFB approved the request, the process took two years to fix the sinkhole. The project cost \$600,000. Ajo would have hired a contractor and fixed the sinkhole without having to wait 18 months, if it had the capital funds to do so. (Dooley Depo. Tr. 4/18/2019 at 43:20-44:23).

323. A drainpipe collapsed during the sinkhole repairs. As a result, the school's chemistry students could not use the sinks in the chemistry classroom. Ajo applied for additional Building Renewal grant funding to fix the collapsed drainpipe. At the time of the deposition of Ajo's superintendent, which was six months later, the collapsed drainpipe still had not been fixed. (Dooley Depo. Tr. 4/18/2019 at 47:17-48:13).

***Wickenburg Unified School District***

324. Wickenburg Unified School District ("WUSD") has four schools and an online program. The schools include a K-5 school, a K-8 school, a middle school, and a high school. (Carlson Depo. Tr. 8/21/2019 at 9:17-10:5).

325. WUSD had significant capital needs that it was unable to meet without local bond funding. The district's capital needs included failing buses, leaking roofs, and failing HVAC units. (Carlson Depo. Tr. 8/21/2019 at 13:7-14:5).

326. WUSD's buses were an average of 17 years old with 225,000 miles. Four to six of the district's 24 buses were completely non-operational. WUSD's superintendent explained why he considered the buses to be a "health and safety issue":

We had had a situation where we had failed a number of state patrol inspections, and we were actually at a stage where we had to go to another district, Dysart, to borrow buses to run routes. So at that stage, we knew that the buses were in such poor shape that ultimately we had to do something.

So we had -- and beyond that, I would get calls almost every weekend where kids would be traveling for an athletic event, and I can remember one time they were headed to Sedona and they were stuck on the side of the road. I



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

can remember another time that I got a call at 11:00 at night and they were stuck on Highway 60. I took those calls every weekend.

(Carlson Depo. Tr. 8/21/2019 at 13:25-14:24, 130:22-131:13).

327. WUSD experienced “constant breakdowns” with “the majority” of its HVAC units. “The district actually added an HVAC technician because the costs were so expensive to continue to try to operate the HVAC units that it was better to try to hire somebody in-house.” The district received complaints from staff, students, and the community because it frequently had to move students around due to the heat when it had HVAC issues. WUSD applied for Building Renewal grant funding to replace its failing HVAC units. Even though “many of [the units] were breaking down routinely” and “some units . . . were outside their life expectancy,” the SFB denied the request because when repaired, “[t]hey did not fall out of the range of temperature between 68 and 82, regardless of their age.” (Carlson Depo. Tr. 8/21/2019 at 18:14-20:21, 34:3-13, 131:14-132:5).

328. Three of WUSD’s schools--Wickenburg High School, Vulture Peak Middle School, and Hassayampa Elementary School--experienced weatherization issues, such as “seeping through the block, the stem walls not being properly covered, [and] a need for tuck-pointing.” In 2017, WUSD applied for Building Renewal grant funding to fix the weatherization issues. Assessments have been completed on all three schools, but after two years, only one school was allowed to proceed to the design phase. The SFB “indicated that they won’t approve the other ones because they don’t have funding” and “want to space them out over a period of time.” (Carlson Depo. Tr. 8/21/2019 at 26:6-28:18).

329. WUSD worked with the SFB to connect Wickenburg High School to the sewer system because the school’s “wetlands system” was not functioning properly. Although the project started as an emergency issue, the project took four years to complete due to SFB delays. The project was completed in 2018. (Carlson Depo. Tr. 8/21/2019 at 25:16-23, 28:19-30:4, 49:19-25).

330. WUSD lacked State funding to address its failing buses, roofs, and HVAC units--all of which the district considered to be health and safety issues for its students. WUSD was only able to address these issues with local funds from the bond passed by its voters in 2016. (Carlson Depo. Tr. 8/21/2019 at 13:7-23).

331. When the legislature cut DAA funding, WUSD’s annual DAA allocation decreased from around \$850,000 to \$70,000. At that time, a single bus cost about \$145,000. The cuts in DAA funding had “a major impact” on WUSD to the point that it was “barely able to even pay for the fixed costs [it] had in terms of [its] basis operational systems.” (Carlson Depo. Tr. 8/21/2019 at 124:3-21).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

332. The State does not provide WUSD with adequate funding to ensure that the district does not fall below the MAG. (Carlson Depo. Tr. 8/21/2019 at 138:8-14).

*Quartzsite Unified School District*

333. Quartzsite Unified School District (“QUSD”) has two schools--Ehrenberg Elementary School and Quartzsite Elementary School. Ehrenberg Elementary School is a K-8 school. The district is busing its kindergarten through third grade students who live in the Quartzsite Elementary School boundary to attend school at Ehrenberg Elementary. Quartzsite Elementary School serves students in fourth through eighth grades. (Whitney Depo. Tr. 3/5/2021 at 15:3-9, 15:17-16:15).

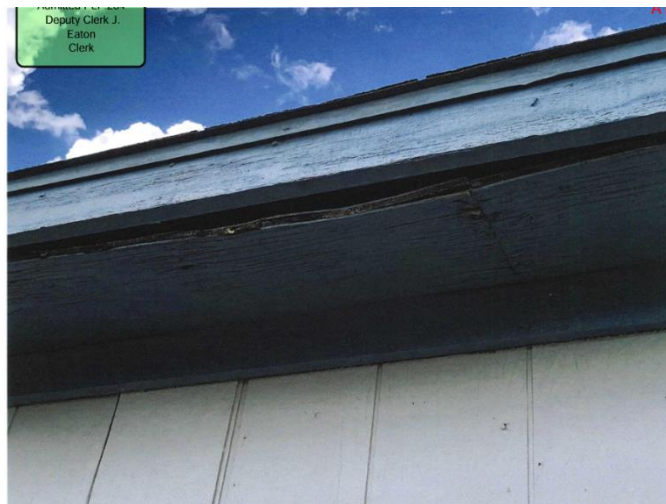
334. Quartzsite Elementary School has one permanent building and four modular-type buildings. Ehrenberg Elementary School has three modular buildings. The modular buildings are “quite old” and “have just deteriorated over time.” For more than eight years, these buildings have experienced flooring problems, wood rotting on the outside of the buildings, and roof leaks. The façade of the modular buildings is “falling apart and rotting,” and the interior also has deteriorated over time. The photographs below show the condition of these buildings:



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

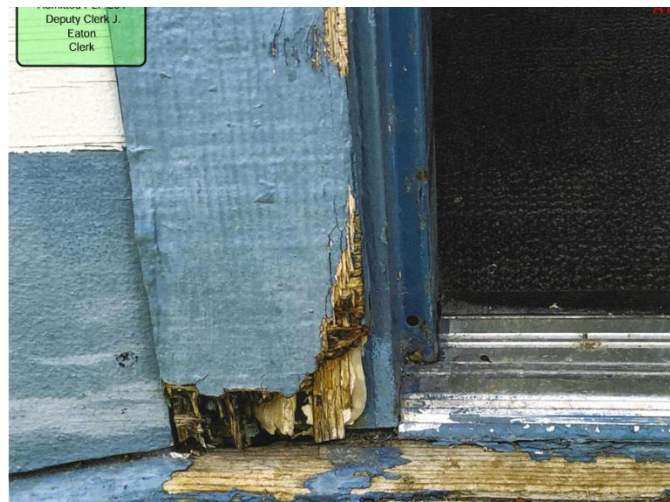
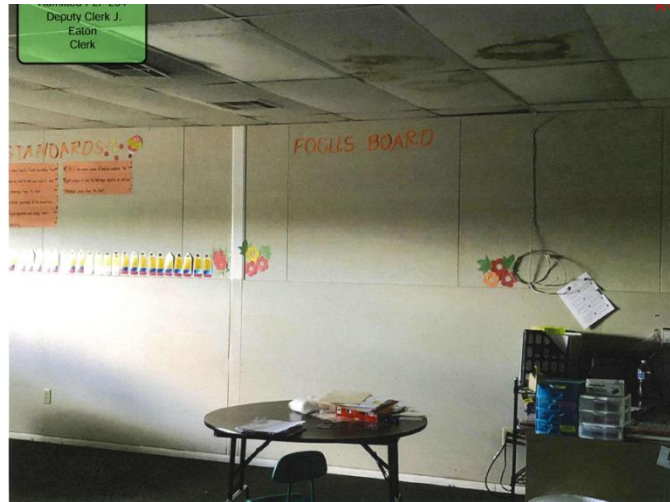
08/11/2025



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025



(Whitney Depo. Tr. 3/5/2021 at 16:23-17:22, 18:14-22, 34:11-35:21, 104:16-105:24; Pl. Exh. 204 at 6, 9, 10, 13, 18).

335. Since 2018 or 2019, the condition of Quartzsite Elementary School has become unsafe to the point that even the district's business manager "wouldn't want [her] children going to school in those buildings." One such safety issue is the fire alarm system that QUSD is "having to pay to put Band-Aids on" because the district does not "have the money that it would cost to replace [the] fire alarm panel because it includes rewiring the whole school." In addition, three main classroom buildings are shut down for structural safety reasons. (Whitney Depo. Tr. 3/5/2021 at 41:19-42:13, 104:13-105:24).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

336. In the summer of 2018, QUSD started the Building Renewal grant application process to correct MAG deficiencies at Quartzsite Elementary School. The projects included renovation of the modular buildings and a weatherization and roofing project of the school's gymnasium. After verbally rejecting the initial assessment for cost reasons, the SFB ultimately approved the projects for the design phase. But none of the projects had been completed in the three years that elapsed before QUSD's business manager was deposed on March 5, 2021. (Whitney Depo. Tr. 3/5/2021 at 40:7-41:9, 42:22-45:4, 111:8-112:16; Pl. Exh. 264).

337. The process of obtaining SFB approval to conduct an assessment of the unusable classroom buildings at Quartzsite Elementary School took over a year. (Whitney Depo. Tr. 3/5/2021 at 45:25-47:10).

338. The assessment of Quartzsite Elementary School concluded:

With the exception to the school's Gymnasium and Cafeteria Building, . . . the existing conditions at Quartzsite Elementary school [sic] have deteriorated to where localized repairs are no longer sustainable through normal day-to-day maintenance. Problematic structural conditions, loss of thermal quality, poor air quality, inadequate heating and cooling, inoperable life safety systems, mold growth, and corroded electrical systems all present an environment that is unsafe to the occupants and visitors.

To correct these existing conditions, per local building code while utilizing standard workmanship practices, would exceed the costs of site demolition of existing structures and construction of a new classroom building.

(Pl. Exh. 264 at 9; Whitney Depo. Tr. 3/5/2021 at 112:17-114:21).

339. The SFB encouraged QUSD to "think outside the box" and proposed replacing the modular buildings at Quartzsite Elementary School with recycled storage containers. But the SFB ultimately determined that it could not proceed with the storage container alternative because it can only "renovate like for like." (Whitney Depo. Tr. 3/5/2021 at 48:18-49:20).

340. The SFD/SFB approved the construction project for the renovation of the modular classroom buildings at Quartzsite Elementary School in 2022. As of trial in June 2024, two years later, the SFD's records still show the project as "active"--meaning the deficiencies first identified in the summer of 2018 still have not been fixed. (Pl. Exh. 640 at line 2861).

341. QUSD sought funding from the SFB for an emergency repair of a well that provides water for the fire suppression system and the gymnasium at Quartzsite Elementary School. QUSD

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

did not hear back from the SFB for a week, and then the SFB required QUSD to correct its submission due to a new system implemented by the SFB. QUSD spent about \$16,000 of its funds for the repair because of the urgency of the situation. The SFB will not reimburse the district for the expenditure of its funds before obtaining SFB approval for the project. (Whitney Depo. Tr. 3/5/2021 at 54:5-59:11).

342. QUSD's annual budget "is not very big" and there "is not a lot of wiggle room" in the budgeting process. The district begins the budgeting process by determining its fixed costs, including salaries, benefits, and utilities, and then calculates how much "money [the district will have] to actually put towards other needs of the district." The district then identifies its anticipated maintenance, repairs, replacements, and other capital needs for the upcoming year. The district "tr[ies] to plan as much as [it] can," but "[s]ometimes in emergency situations . . . [it] cannot predict what costs may arise." (Whitney Depo. Tr. 3/5/2021 at 92:15-94:10).

343. QUSD's total M&O expenditure budget for fiscal year 2020 was around \$1.579 million. For Ehrenberg Elementary School alone, QUSD had approximately \$1.5 to \$2 million in Building Renewal projects. QUSD could not fund those projects with its existing budget. (Def. Exh. 268; Whitney Depo. Tr. 3/5/2021 at 62:4-12).

344. QUSD's voters last approved a bond more than 20 years ago. The district's last bond request, which primarily was for technology infrastructure, failed. (Whitney Depo. Tr. 3/5/2021 at 65:18-24, 109:10-15).

***Chino Valley Unified School District***

345. As noted above, Chino Valley has four schools serving approximately 2,250 students. All the district's schools are below an elevation of 5,000 feet. (Scholl Depo. Tr. 3/26/2019 at 7:11-23).

346. Chino Valley is not able to pass a bond because the district has "a significant number of retirees on fixed incomes, and tax is a four-letter word." (Scholl Depo. Tr. 3/26/2019 at 76:11-77:6).

347. Without bond funds, Chino Valley has unmet facility needs, such as weatherization, carpeting, parking lot, concrete, and playground repairs. (Scholl Depo. Tr. 3/26/2019 at 77:7-78:23).

348. Chino Valley has a "significant lock issue." In some cases, the doors cannot be locked from the inside, and the master keys do not work on all the classroom doors. The district

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

also wants to install security cameras because of its experience with break-ins at the high school. (Scholl Depo. Tr. 3/26/2019 at 79:2-24).

349. Chino Valley has unmet furniture needs with respect to student and teacher desks. Some of the furniture “is broken down and old,” and in some cases, the district does not have enough furniture. (Scholl Depo. Tr. 3/26/2019 at 103:20-104:3).

350. Chino Valley has unmet textbook needs. For instance, as of 2019, the district’s textbooks for high school chemistry had not been replaced for 15 years. The textbooks are out-of-date and worn out. (Scholl Depo. Tr. 3/26/2019 at 99:8-101:5).

351. In 2009, the SFB’s inspection of Chino Valley’s facilities found that the HVAC units “have exceeded useful life” and “have hail damage.” The SFB representative who inspected the units found that none of Chino Valley’s four schools was able to keep classroom temperatures between 69 and 82 degrees, and “some rooms are hot and uncomfortable.” (Pl. Exh. 15 at 2; Pl. Exh. 16 at 1, 4, 7, 10; Kennon Depo. Tr. 2/14/2019 at 91:15-92:11).

352. In April 2014, after its bond election failed, Chino Valley sought SFB funding to replace its old evaporative coolers with HVAC units. Chino Valley noted in its request that “temperatures in the classrooms which are cooled with evaporative coolers can reach into the 90’s which impacts student learning.” Chino Valley again raised the issue with the SFB in September 2015. (Pl. Exh. 103; Scholl Depo. Tr. 3/26/2019 at 67:6-12).

353. In 2018, Chino Valley applied for Building Renewal grant funding for new HVAC units. (Pl. Exh. 27; Pl. Exh. 34).

354. Most of Chino Valley’s classrooms are cooled with evaporative cooling, not HVAC units. Chino Valley’s evaporative coolers were unable to maintain classroom temperatures within the MAG levels during August, the first half of September, and some parts of May. Notably, the SFD/SFB liaison assigned to Chino Valley did not disagree with the district’s determination that the evaporative coolers failed to meet the MAG. But the liaison told Chino Valley that “there is just not enough money to do that.” During a meeting about SFB funding to replace the evaporative coolers with HVAC units, another SFB liaison put it more colorfully: “No fuckin’ way would it ever happen” because of the cost, and “No fuckin’ way, boys. You’re barking up the wrong tree.” (Scholl Depo. Tr. 3/26/2019 at 14:8-15:1, 38:19-24, 41:7-16, 42:10-14, 47:20-48:22, 49:8-50:7, 55:17-56:10, 57:6-18; McCaughey Depo. Tr. 7/22/2019 at 104:11-105:19).

355. In 2022, eight years after Chino Valley’s first request, the SFD finally decided that Chino Valley’s evaporative coolers were a deficiency under the MAG and approved the district’s application for Building Renewal grant funding to replace its evaporative coolers with HVAC

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

units. Nevertheless, at the time of trial in June 2024, the replacement of evaporative coolers at four of Chino Valley's schools still had not yet been completed. (Webster-Adams Depo. Tr. 10/28/2022 at 105:20-25, 110:2-4; Smith Depo. Tr. 11/4/2022 at 78:1-79:8; Pl. Exh. 640 at lines 2926, 2928, 2931, and 2982).

356. Chino Valley has experienced difficulties in satisfying the State's academic standards due to lack of curriculum resources, inability to keep classrooms at temperatures within the MAG, and transportation issues arising from the age of its buses. (Scholl Depo. Tr. 3/26/2019 at 13:16-15:1).

357. As of 2019, Chino Valley has not had a textbook adoption other than math in more than ten years. As such, the district lacks "the instructional tools necessary to instruct effectively." (Scholl Depo. Tr. 3/26/2019 at 14:8-15:1).

358. Chino Valley has been forced to borrow buses from other school districts or charter schools because of its aging buses breaking down. (Scholl Depo. Tr. 3/26/2019 at 14:8-15:1).

***Other School Districts***

359. The record includes evidence of other school districts and schools that lack access to local bond and override funding to meet their capital needs, and as a result, have facilities that are below the MAG. Such school districts and schools include Tucson Unified School District, Peoria Unified School District, Apache Junction School District, Globe High School, Ash Fork School District, Oracle School District, and Ehrenberg School District.

**Conclusions of Law**

***The Standards For Determining Whether The State Has Provided A General And Uniform Public School System As Required By Article XI, § 1 Of The Arizona Constitution***

360. The "general and uniform" clause of the Arizona Constitution requires the legislature to "enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system. . . ." Ariz. Const. art. XI, § 1.

361. "Arizona's enabling act imposed certain conditions to its admission to the United States. Arizona was required to adopt a constitution with provisions 'for the establishment and maintenance of a system of public schools which shall be open to all the children of said State....'" *Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 239 (1994) ("*Roosevelt I*").



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

362. “Article XI of our constitution is the product of the conventioners’ efforts to fulfill the promise of the enabling act and is largely the work of the convention’s committee on education.” *Id.* “The conventioners believed that an educated citizenry was extraordinarily important to the new state.” *Id.* “As the heated debates about education as a requirement for voting show, the conventioners believed that a free society could not exist without educated participants.” *Id.*

363. In *Roosevelt I*, the Arizona Supreme Court rejected the notion that “the financing of public education in Arizona is the responsibility of school districts and not the state.” *Id.* at 240. The Court held that “this proposition is directly refuted by art. XI itself.” *Id.* “Moreover, art. XI, § 1 makes it quite clear that the legislature must enact laws that establish and maintain the public school system. Discretion is left to the legislature as to how it does so, but it must do so.” *Id.*

364. The Arizona Supreme Court “distill[ed] two fundamental principles” from its review of other states’ case law as part of its effort to define “general and uniform”:

First, units in “general and uniform” state systems need not be exactly the same, identical, or equal. Funding mechanisms that provide sufficient funds to educate children on substantially equal terms tend to satisfy the general and uniform requirement. School financing systems which themselves create gross disparities are not general and uniform.

The second principle relates to the tension that exists between the competing values of local control and statewide standards. As long as the statewide system provides an adequate education, and is not itself the cause of substantial disparities, local political subdivisions can go above and beyond the statewide system. Disparities caused by local control do not run afoul of the state constitution because there is nothing in art. XI that would prohibit a school district or a county from deciding for itself that it wants an educational system that is even better than the general and uniform system created by the state.

*Id.* at 241-42 (footnote omitted).

365. “Political subdivisions of the state, such as districts and counties, are therefore free to go above and beyond the system provided by the state. It is thus not the existence of disparities between or among districts that results in a constitutional violation. The critical issue is whether those disparities are the result of the financing scheme the state chooses.” *Id.* at 242.

366. “In short, the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. There is nothing unconstitutional about relying on a

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

property tax. There is nothing unconstitutional about creating school districts. But if together they produce a public school system that cannot be said to be general and uniform throughout the state, then the laws chosen by the legislature to implement its constitutional obligation under art. XI, § 1 fail in their purpose.” *Id.*

367. In *Roosevelt I*, “the undisputed record showed enormous facility disparities among the various school districts and traced those disparities to the statutory scheme, which relie[d] in large part on local property taxation for public school capital requirements.” *Id.* at 235. In this regard, the record showed:

The quality of elementary and high school facilities in Arizona varies enormously from district to district. There are disparities in the number of schools, their condition, their age, and the quality of classrooms and equipment. Some districts have schoolhouses that are unsafe, unhealthy, and in violation of building, fire, and safety codes. Some districts use dirt lots for playgrounds. There are schools without libraries, science laboratories, computer rooms, art programs, gymnasiums, and auditoriums. But in other districts, there are schools with indoor swimming pools, a domed stadium, science laboratories, television studios, well stocked libraries, satellite dishes, and extensive computer systems.

*Id.*

368. The Supreme Court summarized the complex statutory scheme at issue in *Roosevelt* as follows:

The statutes create an educational funding formula. First, each district’s base-level funding needs are determined by multiplying the number of students in the district by an arbitrary, state-wide dollar amount per pupil. A.R.S. § 15-943. The per-pupil amount appears to be unrelated to any minimum amount necessary for a basic education.

The formula then determines the districts’ share of the base level. The required contribution by a district is derived by multiplying the district’s total assessed property value by an arbitrary dollar figure that each district is expected to collect from property taxes. A.R.S. § 15-971(D). If a district’s required contribution falls short of the predetermined base level, the state makes up the difference. *Id.* If the district’s expected contribution exceeds the base level, the district is not entitled to any state “equalization assistance.” *Id.*

Finally, any funding in excess of the equalized level must be raised through bonded indebtedness by the individual districts. These bonds are subject to voter approval

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

because they must be repaid by increased property taxes. “Since bonds are outside the funding formula, a district’s ability to pass bonds is based purely on property wealth and taxpayer willingness.” The Joint Legislative Budget Committee's Staff, *K–12 Funding Formula Examples and Descriptions* 11 (1993). The amount of bonded indebtedness that a district may incur, however, is limited by its total assessed property valuation. A.R.S. § 15-1021.

Under the formula, the cost of public education is allocated as follows: the state (45%), local districts (45%), and the United States and counties collectively (10%). Ninety per cent of Arizona’s school districts receive some equalization assistance. But the true amount of funding is based upon the value of a district’s property and its ability and willingness to tax it. Each district must raise the arbitrary required contribution and must fund anything over the equalization base with added taxes. Property value is therefore crucial to a district’s ability to fund its schools.

The system has a particularly profound effect on capital needs. Although each district’s equalization level includes a budgeted amount for capital improvements, a district may use most of these funds for maintenance and operations if the budgeted maintenance and operations funds are inadequate. *See* A.R.S. § 15-905(F). If a district repeatedly uses its capital funds for maintenance and operations, its facilities will deteriorate unless the district can generate revenue through bonding. . . .

*Id.* at 237.

369. The Supreme Court held that the statutory scheme at issue in *Roosevelt I* “does not satisfy the constitutional mandate of a general and uniform school system.” *Id.* at 242-43. It explained:

Here, the state knew of the profound differences in property value among the districts, yet selected a funding mechanism where 45% of the revenue depends upon property value. Thus, the state’s financing scheme could do nothing but produce disparities. The statutes are inherently incapable of achieving their constitutional purpose. Because the state’s financing system is itself the cause of these disparities, the system, taken as a whole, does not comply with art. XI, § 1 of the Arizona Constitution.

*Id.* at 242.

370. Three years later, the Arizona Supreme Court held that legislative changes to the public-school finance system--the Assistance to Build Classrooms Fund (“ABC legislation”)--

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

failed to comply with the Court's mandate in *Roosevelt*. See *Hull v. Albrecht*, 190 Ariz. 520, 521 (1997) ("*Albrecht I*").

371. The ABC legislation created a fund with each district's gross allotment determined by a statutory formula. "This gross allotment is then reduced by using one of two deductions":

The assessed value deduction reduces the ABC allotment based upon property values within a district--the higher a district's property values, the greater the deduction from the district's gross ABC allotment. Alternatively, the equalization assistance percentage deduction reduces a district's ABC allotment in proportion to the portion of the district's maintenance and operation budget that comes from state equalization assistance. Both deduction formulas are designed to determine a district's need for capital aid. Once both deductions are calculated, the larger of the two is subtracted from the district's gross ABC allotment to yield the district's net ABC grant.

*Id.* at 522.

372. The ABC legislation authorized districts to issue revenue bonds to be repaid from their future ABC income stream as a means of leveraging their ABC allocation. But "districts receiving ABC funds would still need to issue general obligation bonds in order to fund major capital projects--bonds that are backed by property values within a district." *Id.* "The Governor concede[d] that the ABC legislation result[ed] in disparities in revenue-raising abilities among districts." *Id.*

373. In *Albrecht I*, the Supreme Court held that "[t]he ABC legislation deals inadequately with the symptoms and does not address the core problem--heavy reliance on district property taxation with unequalized districts." *Id.* at 524. "The net effect is that the state imposes vastly different tax burdens on citizens in different districts to support a state obligation." *Id.* The Supreme Court observed that "[i]t is possible that the legislature could cure this problem and still rely upon district based property taxation, but it would require substantial equalization at some adequate level of capital facilities." *Id.* The Supreme Court also emphasized its holding in *Roosevelt* that "the duty under Article XI, Section 1, is a state responsibility[.]" and stated that "[t]he state cannot choose, as does the ABC legislation, a system that allows voters within the school districts to opt out by choosing not to issue bonds." *Id.*

374. In *Albrecht I*, the Supreme Court also held that the ABC legislation was not constitutionally adequate because it failed to set a standard against which equalization could be judged. The Court explained:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

The concepts of statewide substantial equalization and local option to go above and beyond the standard are irreconcilable unless the legislature establishes standards for adequate capital facilities. Once a standard is set, the legislature must choose a funding mechanism that does not cause substantial disparities and that ensures that no school in Arizona falls below the standard. A district may then choose to go above, but not below, the statewide standards for capital facilities, and this will not run afoul of the general and uniform requirement. The general and uniform requirement applies only to the state's constitutional obligation to fund a public school system that is adequate. Defining adequacy, in the first instance, is a legislative task. But, in addition to providing a minimum quality and quantity standard for buildings, a constitutionally adequate system will make available to all districts financing sufficient to provide facilities and equipment necessary and appropriate to enable students to master the educational goals set by the legislature or by the State Board of Education pursuant to the power delegated by the legislature. . . .

*Id.*

375. In short, “[t]he baseline chosen must establish the level of funds necessary to (1) bring existing facilities up to an adequate standard; (2) construct new and adequate facilities for growing districts; and (3) maintain all capital facilities at the adequacy level.” *Id.*

376. In *Albrecht I*, the Supreme Court summarized that the ABC legislation failed to meet the requirements of Article XI of Arizona’s constitution because: “a) it is itself the cause of continued substantial disparities among districts; b) the legislature may not delegate to the districts the responsibility to provide adequate capital facilities; and, c) Article XI mandates adequate capital facilities statewide, and this legislation does not create, let alone meet, an adequate capital facilities standard.” *Id.* at 525.

377. “The legislature’s most recent attempt to create a constitutional school financing system [following *Albrecht I* was] the Students FIRST Act of 1998. . . .” *Hull v. Albrecht*, 192 Ariz. 34 (1998) (“*Albrecht II*”). In *Albrecht II*, the Supreme Court accepted special action jurisdiction to consider Governor Hull’s petition for a declaration that Students FIRST complied with Arizona’s Constitution.

378. In *Albrecht II*, the Supreme Court explained that *Albrecht I* “establishes a two-pronged test for assessing whether a school financing system meets the state constitutional requirements: (1) the state must establish minimum adequate facility standards and provide funding to ensure that no district falls below them; and (2) the funding mechanism chosen by the state must not itself cause substantial disparities between districts.” *Id.* at 37 ¶ 8.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

379. “The first prong of the test set forth in [*Albrecht I*] includes two components: the state must create minimum adequacy standards for capital facilities and must ensure, through state funding, that all districts comply with them.” *Id.* at 37 ¶ 10. The Supreme Court held that Students FIRST “satisfies both components of the first prong of the test set out in [*Albrecht I*].” *Id.* at 37 ¶ 12. The Court explained its conclusion:

The Act itself creates some building standards. The standards included in the Act regulate the basic physical infrastructure of school buildings, mandate compliance with local codes, and set minimum gross square footage requirements. . . . The Act also directs the School Facilities Board (“SFB”), a new nine-member administrative agency, to promulgate additional requirements. The SFB must set standards for all facilities and equipment necessary to achieve the state’s academic requirements, including school sites, classrooms, libraries, cafeterias, auditoriums or multi-purpose rooms, technology, transportation, and facilities for science, arts and physical education. . . . Thus, on its face, the Act complies with the requirement that a general and uniform school financing system include statewide minimum adequacy standards for capital facilities.

The state also must ensure that every school district complies with the minimum adequacy standards. . . . The Act meets this requirement by mandating that every school district must comply with the standards and by providing state monies sufficient to fund each district’s compliance. The Act charges the SFB with responsibility for monitoring the adequacy of each school district’s facilities. . . . If deficiencies exist, the SFB may distribute funds from several new funding sources in order to (1) bring existing facilities up to standards; (2) construct new facilities for growing districts; and (3) maintain all capital facilities at the adequacy level. . . . By providing state funds and empowering the SFB to oversee compliance with the standards, the Act fulfills the state’s constitutional obligation to finance adequate capital facilities.

*Id.* at 37 ¶¶ 11-12 (footnote and citations omitted).

380. “The second prong of the [*Albrecht I*] test requires that the legislature fund public schools through a financing system that does not itself cause substantial disparities between districts.” *Id.* at 37 ¶ 13. The Supreme Court held that “[b]y failing to fulfill this requirement,” the version of Students FIRST before it in *Albrecht II* “fail[ed] to provide for the establishment and maintenance of a general and uniform public school system.” *Id.*

381. The Supreme Court described the financing options available to districts under Students FIRST:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

The Act establishes two local financing options for school districts. Which option is available depends upon whether a district (1) participates in the state funding plan (“participating districts”), or (2) “opts out” of state funding and pays for its capital needs solely through local financing (“opt-out districts”). . . . Districts may opt out only if they certify their compliance with the state minimum adequacy standards and gain approval of the option from their electors. . . . Opt-out districts must report annually to the SFB to ensure that they remain in compliance; districts that fall below the standards will be forced back into the state funding plan. . . .

*Id.* at 38 ¶ 15 (citations omitted).

382. The Supreme Court held that “[t]he Act’s option allowing districts to choose local financing in lieu of state funding is not itself unconstitutional” and “[o]nce the state has assured compliance with state standards, allowing districts to rely on their local property bases to secure local funding to surpass those standards is not unconstitutional.” *Id.* at 39 ¶ 18. “But when the restriction on bonding and the compression of school district assessment ratios are considered in conjunction with the opt-out provision, the system as a whole creates significant distinctions in the local funding mechanisms between opt-out and participating districts. Differentially enabling two classes of districts to access their respective property bases results in systemic, structural differences in the ability of districts to exceed state minimums through local funding. Because of these structural differences, the Act as a whole continues to formalize and perpetuate a structure that fails the general and uniform test.” *Id.* at 39 ¶ 19.

383. In *Albrecht II*, the Supreme Court concluded:

Once the Students FIRST plan assures compliance with adequate standards, differences between districts that result from disparate property wealth or voter willingness to fund capital improvements are not unconstitutional. . . . Differences perpetuated by the financing system itself *are* unconstitutional. . . . Like the systems we rejected as constitutionally infirm in *Roosevelt [I]* and [*Albrecht I*], Students FIRST will necessarily cause substantial disparities between public school districts. Those disparities will result not from factors such as parental influence, family involvement, voter willingness to incur debt for public schools, a free market economy, or housing patterns. Rather, the disparities will result from the funding mechanism chosen by the state. The Arizona Constitution forbids that result.

*Id.* at 39 ¶ 20 (citations omitted) (emphasis in original).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

***The Current Capital Funding System Fails  
The First Prong Of The Test Set Forth In Albrecht I***

384. Here, as in *Roosevelt I*, the record “show[s] enormous facility disparities among the various school districts and traced those disparities to the statutory scheme, which relies in large part on local property taxation for public school capital requirements.” *Roosevelt I, supra* at 235.

385. As set forth in more detail above, the following description of the evidence in *Roosevelt I* describes the disparities among Arizona’s schools today:

The quality of elementary and high school facilities in Arizona varies enormously from district to district. There are disparities in the number of schools, their condition, their age, and the quality of classrooms and equipment. Some districts have schoolhouses that are unsafe, unhealthy, and in violation of building, fire, and safety codes. Some districts use dirt lots for playgrounds. There are schools without libraries, science laboratories, computer rooms, art programs, gymnasiums, and auditoriums. But in other districts, there are schools with indoor swimming pools, a domed stadium, science laboratories, television studios, well stocked libraries, satellite dishes, and extensive computer systems.

*Id.*

386. Here, the State at least arguably established the first component of the first prong of the *Albrecht I* test by creating minimum adequacy standards for capital facilities.<sup>9</sup> But, as described in more detail below, the State has failed in its obligation under *Albrecht I* to “ensure, through state funding, that all districts comply with them.” *Albrecht I, supra* at 37 ¶ 10.

387. Indeed, after the legislature repealed the Building Renewal formula and replaced it with the current Building Renewal grant program, the system ensured that districts that depend on state funding for their capital projects would *not* be able to comply with the MAG because a school facility must already be below the MAG to qualify for Building Renewal grant funding. In other words, the system guarantees that districts must operate *below* the MAG--often for significant periods of time--before state funding is provided to correct the deficiency and bring the facility back up to the MAG level. As such, the public-school capital finance system violates the first prong of the test announced by the Arizona Supreme Court in *Albrecht I*.

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<sup>9</sup> The Court notes that the MAG have not been updated regularly, and some of the MAG are outdated.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

388. Even if the Building Renewal grant system were not constitutionally infirm for the reason stated above, the State has not met its obligation under the first prong of the *Albrecht I* test to provide sufficient funding for districts to comply with the State-created minimum adequacy standards for capital facilities. As set forth in detail above, the Building Renewal program routinely runs out of funds before the end of the fiscal year--meaning that many projects that have been approved by the SFD (or the SFB before it) to correct existing MAG deficiencies must be delayed until funding is available. The evidence shows that many districts without access to local bond or override funds must operate their schools in deficient facilities for months or even years while awaiting funding. As such, the public-school capital finance system violates the first prong of the *Albrecht I* test for this reason alone.

389. In *Albrecht II*, the Supreme Court held that Students FIRST facially “fulfill[ed] the state’s constitutional obligation to finance adequate capital facilities” “[b]y providing state funds and empowering the SFB to oversee compliance with the standards.” *Albrecht II, supra* at 37 ¶ 12. But the legislature has failed to appropriate sufficient state funds to enable the SFD (or the SFB before it) to properly oversee compliance with the MAG. As such, even if the public-school capital finance system facially satisfies the constitutional minimums as set out by the Supreme Court, as applied, it does not.

390. Moreover, the evidence shows that MAG deficiencies currently exist--and have existed for many years--in many schools across the State. As such, the State has failed in its obligation under the first prong of the *Albrecht I* test to ensure that districts are complying with the MAG. Even if this failure is not due to lack of funding, the State has failed to comply with the Supreme Court’s mandate in *Albrecht I*.

391. As noted above, A.R.S. § 41-5702(A)(3), formerly A.R.S. § 15-2002, imposes upon the State the obligation to “[i]nspect, contract with a third party to inspect or certify school district self-inspections of school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in § 41-5711, the accuracy of the reporting of vacant and partially used buildings pursuant to this subsection and routine preventive maintenance guidelines as prescribed in this section with respect to constructing new buildings and maintaining existing buildings.” This was an important part of Students FIRST. The State admits that it is not complying with this statutory obligation. The evidence shows that the SFD lacks the funding and staffing to comply with its inspection obligation. As such, the public-school capital finance system fails to satisfy the first prong of the *Albrecht I* test.

392. To satisfy the “general and uniform” clause of the Arizona Constitution, “[t]he baseline chosen [by the legislature] must establish the level of funds necessary to . . . construct new and adequate facilities for growing districts . . .” *Albrecht I, supra* at 522. The evidence here establishes that the funding provided to districts for constructing new schools is insufficient

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

to construct a new MAG-compliant facility. Districts must use local funding, such as from bonds or overrides, to supplement the State-provided funds to construct facilities that meet the MAG standards. As such, for this reason, the public-school capital finance system fails to satisfy the constitutional minimums as determined by the Arizona Supreme Court in *Albrecht I*.

393. To be sure, as the Supreme Court recognized in *Roosevelt I*, there is nothing unconstitutional about disparities resulting from districts using local bond funds “to go above and beyond the system provided by the state.” *Roosevelt I, supra* at 242. But the disparities that currently exist largely are *not* the result of districts deciding to use local funds to exceed the constitutionally minimum state standards. To the contrary, the evidence establishes significant disparities between districts that lack access to bond funds and are unable to meet the MAG, on the one hand, and districts that can meet the MAG only because they have access to bond funds, on the other hand.

394. The Building Renewal program does not provide funding for districts’ soft capital needs, such as buses, technology, and curriculum. The State purportedly provides funding for soft capital needs through DAA. But for fiscal years 2009 to 2022, the legislature appropriated far less funding for DAA than the formula amount. As such, the State has not provided sufficient funding for districts’ soft capital needs. Even with the restoration of DAA funding to the formula level in fiscal year 2022, largely because the DAA is not indexed to inflation, the DAA remains insufficient to meet districts’ soft capital needs.

***The Current Capital Funding System Fails  
The Second Prong Of The Test Set Forth In Albrecht I***

395. The current public-school capital finance system also fails the second prong of the *Albrecht I* test because the legislature has chosen to fund public schools through a financing system that itself causes substantial disparities between districts by creating and exacerbating disparities between districts that have access to local funds through bond and/or override elections and districts that do not have such access.

396. Building Renewal formula funding previously provided a means for equalizing funding for capital needs among districts. As set forth above, following the legislature’s repeal of formula funding and implementation of the Building Renewal grant program in its place, a district’s ability to meet its capital needs depends largely on its access to local funds. In short, Arizona has returned to a system that forces districts to rely largely on local property taxation to fund their capital needs, and as such, property value is crucial to a district’s ability to fund its schools--not unlike the system the Arizona Supreme Court held to be unconstitutional in *Roosevelt*.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

397. As the Supreme Court noted in *Albrecht I*, if the legislature adopts a public-school capital finance system with “heavy reliance on district property taxation with unequalized districts,” to meet the State’s obligations under the “general and uniform” clause, “it would require substantial equalization at some adequate level of capital facilities.” *Albrecht I, supra* at 524. Although the current system relies heavily on local property taxation for districts to meet their capital needs, the system lacks the substantial equalization component following repeal of the Building Renewal formula funding. As a result, the current system itself causes substantial disparities among districts, and the system fails the second prong of the *Albrecht I* test.

398. As set forth above, under the current system, a district’s ability to comply with the MAG is based largely on the district’s property wealth. Districts with access to funding based on property wealth within their boundaries can implement preventative maintenance programs to avoid falling below the MAG while still providing for their soft capital and operational needs. But districts without access to local bond funding often must await a system failure--meaning those districts are below the MAG--before being eligible to apply for Building Renewal grant funding to correct the deficiency. Moreover, the application and approval process is lengthy, and funding to correct existing deficiencies often is not readily available. As a result, the current system itself causes substantial disparities among districts, and the system fails the second prong of the *Albrecht I* test.

***The State’s And Special Intervenors’ Defenses***

399. The Special Intervenors contend that districts receive “equalized, per-pupil formula” funding in the form of DAA, which is “popularly considered extra funding for capital needs.” (Special Intervenors’ Closing Brief at 5:27-6:1). The Special Intervenors further contend that: (i) “districts use such monies regularly for capital maintenance, repair and replacement through expenditures for maintenance and construction staff compensation, contractor services, and supplies made from their Maintenance & Operations (‘M&O’) fund, and through expenditures for capital assets, systems and equipment, contracted capital services, facilities-related supplies, soft capital assets like desks and computers, and other capital needs from their Unrestricted Capital Outlay (‘Unrestricted Capital’) fund”; and (ii) “districts can and do transfer monies originally put in their M&O budget and fund into their Unrestricted Capital fund for uses in acquiring capital-related items, soft capital items, contracted services, as well as capital repairs and replacement of capital assets.” (*Id.* at 6:2-13). The Court is not persuaded that the State-provided DAA funding overcomes the constitutional infirmities discussed above.

400. Notably, the legislature adopted an equalization formula beginning in the 1980-1981 fiscal year. (Pl. Exh. 784 (“1980, 2<sup>nd</sup> Special Session, Chapter 9, House Bill 2013”)). The equalization formula existed when Students FIRST was enacted in 1998. (Pl. Exh. 226 at 4).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

Despite the existence of the equalization formula, the Arizona Supreme Court held the public-school capital finance system unconstitutional in *Roosevelt I*, *Albrecht I*, and *Albrecht II*.

401. Moreover, the evidence establishes that districts primarily use their M&O funds to pay for salaries, benefits, and other operational expenses. As such, districts generally do not have M&O funds available to meet their capital needs and to correct existing MAG deficiencies. But even if using M&O funds for needs other than unmet capital needs was a matter of choice by local districts, a system that enables local districts to choose to fall below the MAG does not pass constitutional muster. As the Supreme Court exhorted the legislature in *Albrecht I*: “Choose a system that ensures adequate capital facilities statewide. Local control does not include the power to choose substandard facilities. Local control includes the power to choose facilities beyond the standard.” *Albrecht I*, *supra* at 525; *see also* Ariz. Const. art. XI, § 1 (legislature must “enact such laws as shall provide for the establishment **and maintenance** of a general and uniform public school system. . . .”) (emphasis added).

402. Forcing districts to decide whether to make significant cuts to their operational needs so they can use their M&O funds instead to cover unmet capital needs places these districts in an untenable position. Notably, districts with access to local bond funds to cover their capital needs are not forced to make such a choice.

403. The Special Intervenor contend that “[p]erhaps the most glaring omission [in Plaintiffs’ case] is any showing that meets the *Roosevelt II* requirement for proof that districts ‘have capital facilities needing repairs and renovation’ that are ‘directly linked’ ‘to their pupils’ scholastic performance’ and ‘pedagogical success,’ and that ‘their students are unable to meet the educational goals of the Legislature due to the Legislature’s failure to fund’ adequately.” (Special Intervenor’s Closing Brief at 42:2-6 (*citing Roosevelt Elementary School District No. 66 v. State*, 205 Ariz. 584, 591-93 ¶¶ 32, 40 (App. 2003) (“*Roosevelt II*”)).

404. In *Roosevelt II*, eight school districts claimed that the legislature’s “fail[ure] to fund the Building Renewal Fund, a component of the Students FIRST legislation, according to the statutory formula for fiscal years 1999-2000, 2001-2002 and 2002-2003” violated the “general and uniform” clause of Arizona’s Constitution. *Roosevelt II*, *supra* at 585 ¶ 1. The trial court agreed with the districts, but the Court of Appeals reversed. *Id.* The Arizona Supreme Court declined review. But “[d]enial of a petition for review has no precedential value” and “does not mean [the Supreme Court] accepted the Court of Appeals’ legal analysis or conclusion. . . .” *Calvert v. Farmers Ins. Co. of Arizona*, 144 Ariz. 291, 297 n.5 (1985).

405. The Special Intervenor based their argument under *Roosevelt II* on the following language in the Court of Appeals’ opinion:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

. . . In other words, although the districts showed that they have capital facilities needing repairs and renovation, they did not link those needs to their pupils' scholastic performance. What they showed instead is that district officials have a significantly more difficult situation than they would have if there were sufficient funds available to improve their facilities not directly linked to pedagogical success.

\* \* \*

In neither *Albrecht I* nor *Albrecht II* did the supreme court remove the burden on the school districts to demonstrate that their students are unable to meet the educational goals of the Legislature due to the Legislature's failure to fund the BRF according to the legislative formula. The limits set by Article 11, Section 1 having been demarcated by the supreme court in its approval of all but the opt-out provision of the Students FIRST legislation [in *Albrecht II*], we may not and should not substitute our judgment for that of the Legislature, . . . and the Legislature has linked funding for facilities to the achievement of its academic standards as a higher priority than funding for other buildings.

*Id.* at 591, 592-93 ¶¶ 32, 40 (citation omitted).

406. The Court is not persuaded by the Special Intervenors' reliance on *Roosevelt II*, which (as discussed below) is distinguishable from the case before the Court, for several reasons.

407. *First*, it is significant that "[t]he facilities about which the districts complain[ed] in *Roosevelt II*] are either new construction excluded from the BRF or primarily administrative and excluded from the BRF database and the SFB guidelines because the SFB has determined that such facilities are not required to meet the State's academic standards for its students." *Roosevelt II, supra* at 591 ¶ 32 (footnote omitted). In *Roosevelt II*, the State generally did not dispute the districts' contentions regarding the conditions of these facilities and instead argued that "the capital needs presented by the districts 'are, at best, only tangentially related to student opportunity and achievement. . . .'" *Id.* at 590-91 ¶ 30.

408. The districts in *Roosevelt II* focused on deficiencies in non-academic buildings that were ineligible for Building Renewal funding--without challenging the legislature's decision to exclude non-academic buildings from the Building Renewal program. The narrow focus of the challenge was significant to the Court of Appeals' conclusion:

Within the limits of the Constitution, it is not appropriate that a court involves itself in the legislative process such as to question the wisdom or priorities of the Legislature's determination that money it appropriates first be apportioned to what the Legislature perceives as the primary need to bring buildings necessary for

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

academic success to minimum adequate standards before restoring buildings dedicated to other school uses. . . . “Generally, every legislative act is presumed to be constitutional and every intendment must be indulged in by the courts in favor of validity of such an act.” . . . This is most particularly true given that the school districts underlying challenges are to the lack of full legislative funding only for those facilities addressed by the BRF and not to the restrictions of the BRF itself or the SFB guidelines as inadequate to meet their students’ needs, academic and not, directly or not. ***It is not enough to allege that the BRF funding is inadequate for the districts’ purposes when the districts’ complaints are to those facilities not covered by the BRF and the limitations of the BRF and the SFB guidelines are not challenged.***

\* \* \*

The school districts argue the importance of administrative facilities to student achievement. This is essentially an indirect challenge to the Legislature’s determination that these types of facilities are not as necessary as other types of facilities in order for students to achieve the academic standards set by the Legislature. . . .

We are not disputing the importance of administrative facilities. Evidence showed that district administrative offices support the instructional programs in the schools and are important for effective instruction and concomitant student achievement. ***However, without a challenge to the legislative and SFB determinations to exclude such facilities as a priority, we decline to review the exclusion of administrative facilities.***

Again, the school districts claim that the definition of and timing to correct facility “deficiencies” is faulty, causing them to use BRF monies for projects that should have been covered by the DCF [Deficiencies Correction Fund]. ***However, the districts have not challenged the DCF, its demise or its final administration.***

*Id.* at 591-92, 593-94 ¶¶ 33, 43-45 (footnotes and citations omitted) (emphasis added).

409. Here, unlike *Roosevelt II*, the MAG-related deficiencies addressed above focus on the districts’ academic buildings that are eligible for Building Renewal funding. To be sure, Plaintiffs presented evidence critical of the legislature’s decision to make non-academic buildings, like administrative office and bus barns, ineligible for Building Renewal funding. (See, e.g., Pl. Exh. 225 at 13). But the legislature’s decision in that regard is not the fundamental basis for the Court’s conclusion that the public-school capital finance system does not satisfy the Arizona’s Constitution’s “general and uniform” clause.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

410. *Second*, the Court recognizes that “[d]efining adequacy, in the first instance, is a legislative task.” *Albrecht I, supra* at 524. The Court also heeds the Court of Appeals’ observation that courts “may not and should not substitute [their] judgment for that of the Legislature.” *Roosevelt II, supra* at 593 ¶ 40. As relevant here, the Legislature exercised its judgment by creating academic standards, creating the MAG, and “link[ing] funding for facilities to the achievement of its academic standards as a higher priority than funding for other buildings.” *Id.* “But, in addition to providing a minimum quality and quantity standard for buildings, a constitutionally adequate system will make available to all districts financing sufficient to provide facilities and equipment necessary and appropriate to enable students to master the educational goals set by the legislature or by the State Board of Education pursuant to the power delegated by the legislature.” *Albrecht I, supra* at 524. Here, as set forth above, the evidence demonstrates that the funding provided by the legislature is insufficient for schools to meet the MAG *that the legislature established* as necessary to meet *its educational goals*.

411. *Finally*, unlike the trial court in *Roosevelt II*, this Court is *not*: (i) ruling that “a major devastation of the BRF is unconstitutional in and of itself, and requires no proof of its impact on the affected students’ ability to meet required academic standards”; or (ii) “declaring that a lack of funding constitutes a constitutional violation *per se*.” *Roosevelt II, supra* at 592 ¶¶ 33, 34. Here, as set forth above, the evidence establishes that State funding is insufficient for districts without access to local bond and/or override funds to meet the MAG that “provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards pursuant to” applicable law. A.R.S. § 41-5711(F).

***The Court Declines To Consider Plaintiffs’ Equal Protection And Tax Uniformity Claims***

412. Article 2, Section 13 of Arizona’s Constitution provides that “[n]o law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privilege or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

413. Article 9, Section 1 of Arizona’s Constitution provides that “[e]xcept as provided by § 18 of this article, all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax. . . .”

414. Plaintiffs assert claims that the public-school capital finance system violates the privileges or immunities and the tax uniformity provisions of Arizona’s Constitution.

415. In *Roosevelt I*, the Arizona Supreme Court declined to consider the plaintiffs’ challenge to the public-school capital finance system under the privileges or immunities clause of the Arizona Constitution, explaining:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

We need not, however, resolve this conundrum [as to whether the rational basis test or the compelling state interest (strict scrutiny) test applies to a claim under the privileges or immunities clause] because where the constitution specifically addresses the particular subject at issue, we must address that specific provision first. . . . We need not resort to the less specific provision unless the argument based upon the more specific fails. The districts' challenge focuses on the public school system. The education provisions of the constitution are more specific than the privileges and immunities provision. By relying on the specific rather than the general, we also avoid the difficult questions and uncharted territory that surround equal protection and other governmental functions. . . . We therefore begin with those portions of our constitution that specifically address the field of education.

*Roosevelt I*, *supra* at 238 (citations and footnotes omitted).

416. The Supreme Court's rationale in *Roosevelt I* applies equally here. As set forth above, the Court has resolved Plaintiffs' claims under the more specific educational funding provisions of Arizona's Constitution. Accordingly, the Court declines to consider Plaintiffs' equal protection (privileges and immunities) and tax uniformity claims.

***Declaratory Relief***

417. For the reasons set forth above, Plaintiffs are entitled to a declaratory judgment that the current public-school capital finance system violates Article XI, Section 1 (the "general and uniform" clause) of Arizona's Constitution.

418. Plaintiffs also are entitled to a declaratory judgment that the current public-school capital finance system violates Article XI, Section 10 of Arizona's Constitution, which provides that "the legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all state educational institutions, and shall make such special appropriations as shall provide for their development and improvement."

***Injunctive Relief***

419. The Court has authority to issue permanent injunctive relief. *See* A.R.S. § 12-1801.

420. "Although there is substantial Arizona law addressing the preliminary injunction standard, there is comparatively little law addressing the equitable remedy of a permanent injunction. Building on preliminary injunction law where applicable, the standard for a party to obtain a permanent injunction under Arizona law requires a showing that: (1) the plaintiff prevailed on the merits; (2) damages will not provide an adequate remedy; (3) the balance of hardships favors



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

the plaintiff and (4) public policy favors the permanent injunction.” *Brown v. City of Phoenix*, 258 Ariz. 302, 308 ¶ 17 (App. 2024) (citations omitted).

421. Permanent injunctive relief is appropriate here because: (i) Plaintiffs prevailed on the merits; (ii) damages will not provide an adequate remedy; (iii) no other remedy would provide meaningful relief; (iv) the balance of hardships favors Plaintiffs; and (v) public policy favors a permanent injunction.

***Other Outstanding Issues***

422. Although the Court will enter a final judgment that grants declaratory and permanent injunctive relief in a form to be determined, the Court does not intend to impose an artificial deadline for compliance with the permanent injunction because the Court recognizes that its ruling will be the subject of appellate proceedings. As such, once final judgment is entered, the Court intends to issue an immediate temporary stay of its ruling to allow the State and the Special Intervenor to pursue their available appellate remedies, including a further stay of this Court’s ruling pending resolution of the appellate proceedings.

423. The Court will reserve ruling on Plaintiffs’ request for attorneys’ fees until entry of the final judgment.

424. Although the Court is signing this Minute Entry, the Court does ***not*** intend this Minute Entry to constitute its final judgment in this action. Rather, as set forth below, the Court will enter a separate final, appealable judgment.

**Disposition**

Based on the above findings of fact and conclusions of law, and for the reasons set forth above,

**IT IS ORDERED** that Plaintiffs shall lodge a proposed form of final judgment consistent with the Court’s findings of fact and conclusions of law and file any applications for attorneys’ fees and/or costs by **September 12, 2025**.

**IT IS FURTHER ORDERED** that, for purposes of convenience and efficiency, the deadline for the State and Special Intervenor to object to Plaintiffs’ proposed form of final judgment is extended, and the State’s and Special Intervenor’s objections to the proposed form of final judgment and to any applications for attorneys’ fees and/or costs must be filed by **October 13, 2025**.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2017-006975

08/11/2025

**IT IS FURTHER ORDERED** that Plaintiffs' replies in support of their proposed form of judgment and applications for attorneys' fees and/or costs must be filed by **October 31, 2025**.

Dated: August 12, 2025.

/s/ Dewain D. Fox  
Hon. Dewain D. Fox  
Superior Court Judge