Saban, *Pope*, and the Benefits Theory of Taxation

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INTRODUCTION

The benefits theory of taxation posits that tax burdens should be based on the benefits taxpayers receive. At its core, the theory is about tax fairness.[1] While it has a long pedigree,[2] it has largely fallen out of favor, in part because of difficulties determining how much any one taxpayer benefits from government activities given the scope of modern government and taxpayers' heterogeneous interests.[3] Nonetheless, elements of our tax system still reflect this theory. For instance, social security retirement benefits are reserved for those who paid social security taxes, ensuring that only those who paid the taxes benefit from them.[4]

A less well-known example can be found in state restrictions on the use of revenues extracted from road users. Congress declared in the Hayden-Cartwright Act of 1934 that it was "unfair and unjust to tax motor vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways."[5] Accordingly, it conditioned federal highway funds on states dedicating their road use revenues to road purposes.[6]

In response, many states adopted constitutional "anti-diversion" provisions, requiring that revenues extracted from road users be spent on the roads.[7] Some specifically identified the taxes their provisions would cover,[8]

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1. *See* Joseph M. Dodge, *Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles*, 58 TAX L. REV. 399, 399 (2005). The benefits theory has numerous formulations. One, which Professor Joseph Dodge calls the "contractarian" theory, focuses on the benefits received from government spending. *Id.* at 402. Another, which he calls the "new benefit principle," posits a direct link between income and benefits received, where income becomes the measure of benefits received and therefore the basis for imposing taxes. *Id.* at 399. Still other versions exist. *See, e.g.*, Tessa Davis, *Taxation and Belonging: The History and Rhetoric of Tax, Full Citizenship, and Community Membership in the United States*, *in* TAXATION, CITIZENSHIP AND DEMOCRACY IN THE 21ST CENTURY 169, 184 (Yvette Lind & Reuven S. Avi-Yonah, eds., 2024) (arguing that the benefits theory links taxation and citizenship).

2. *See, e.g.*, Adam Chodorow, *Biblical Tax Systems and the Case for Progressive Taxation*, 23 J.L. & RELIGION 51, 53–54 (2008) (examining taxes grounded in the benefits theory found in the Talmud).

3. *See* Dodge, *supra* note 1, at 401–04.

4. *See Social Security Credits*, SOC. SEC. ADMIN., https://www.ssa.gov/benefits/retirement/planner/credits.html [https://perma.cc/UPX7-3D5Q].

5. Hayden-Cartwright Act of 1934, ch. 586, § 12, 48 Stat. 993, 995.

6. *Id.*

7. A list of states that adopted constitutional anti-diversion provisions, the years they were adopted, and the type of provision is included in Appendix A, *infra*.

8. *See, e.g.*, IDAHO CONST. art. VII, § 17. The provision was adopted in 1940 and covers "the proceeds from the imposition of any tax on gasoline and like motor vehicle fuels sold or used

while others used broad language, employing a variety of formulations. For instance, some provisions covered charges or taxes "with respect to" motor vehicles;[9] others covered charges "relating to" motor vehicles.[10]

By 1952, when Arizona adopted its anti-diversion provision, twenty-one states had already done so, reflecting the full range of approaches.[11] The drafters of Arizona's provision proposed—and Arizona voters adopted—the broadest version then extant, covering "fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets."[12] The voter pamphlet promoting the provision explained that the provision's purpose was to "INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY."[13] The pamphlet further grounded the provision in the benefits theory of taxation, stating that "road user taxes are fair because they are based on benefits received by the taxpayer. . . . If not used for road purposes, these user taxes become unfair because they are not based on benefits received . . . ."[14]

The scope of Arizona's anti-diversion provision remained untested for over sixty years. However, that changed after Arizona voters rejected a plan to fund a new stadium for the Cardinals football team ("Cardinals Stadium") through new taxes that would be primarily paid for by Arizonans.[15] In response, Governor Hull created the Stadium Plan "B" Advisory Task Force to explore other funding options. The Task Force proposed—and voters approved—funding the stadium and other sports-related projects through a tax on people who rented cars in Maricopa County.[16] The car rental surcharge was nominally imposed on the car rental companies as a transaction privilege tax, but it was intended to be—and was—passed along to customers.[17] Thus,

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to propel motor vehicles upon the highways of this state and from any tax or fee for the registration of motor vehicles." *Id.*

9. *See, e.g.*, COLO. CONST. art. X, § 18 (amended 1975); N.H. CONST. part II, art. VI-a (1938).

10. *See, e.g.*, OHIO CONST. art. XII, § 5a (1948); KY. CONST. § 230 (amended 1945).

11. ARIZ. SEC'Y OF STATE, INITIATIVE AND REFERENDUM PUBLICITY PAMPHLET (1952); *see also infra* Appendix A (listing states and when they adopted similar provisions). A copy of Arizona's voter pamphlet is reprinted in Appendix C, *infra*.

12. ARIZ. CONST. art. IX, § 14.

13. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.

14. ARIZ. SEC'Y OF STATE, *supra* note 11, at 4.

15. Letter from Jane Dee Hull, Ariz. Governor, to prospective members of the Stadium Plan "B" Task Force (Nov. 5, 1999).

16. GOVERNOR'S STADIUM PLAN "B" ADVISORY TASK FORCE, FINAL REPORT (2000), https://azmemory.recollectcms.com/nodes/view/130315 [https://perma.cc/VB6D-APAN]. As discussed below, the plan also imposed a tax on hotel customers. *See infra* Section III.B. However, that tax did not implicate the state constitution's anti-diversion provision.

17. ARIZ. REV. STAT. ANN. § 5-839 (2024).

Arizona voters were able to shift the cost of constructing the stadium to out-of-state drivers. Notably, the amount due was determined as a percentage of the total rental cost, which increased with the length of the rental.[18] Therefore, the amount due roughly reflected the time spent driving on Arizona roads.

Shortly thereafter, the city of Phoenix decided to build an offsite car rental facility at Sky Harbor Airport.[19] As with the stadium, city leaders opted to fund the construction through a fee imposed on those who rent cars, that is drivers visiting the state.[20] Like the surcharge, the amount due was determined based on the total cost of the rental and thus served as a rough proxy for road use.[21] Unlike the surcharge used to fund Cardinals Stadium, this fee was imposed directly on the customers, though it was collected and remitted by the rental car companies.[22]

Car rental companies challenged the Cardinals Stadium surcharge in *Saban Rent-A-Car LLC v. Arizona Department of Revenue*.[23] The plaintiffs argued that the surcharge violated Arizona's anti-diversion provision because it was an excise "relating to [the] registration, operation, or use of vehicles" and the proceeds were not spent on the roads.[24] Despite the provision's broad language, the Arizona Supreme Court significantly restricted its scope, holding that the provision applies only to taxes that are "a prerequisite to, or triggered by, the legal operation or use of a vehicle on a public road."[25] Given this narrow construction, the court concluded the anti-diversion provision did not cover the surcharge.[26]

Car rental customers challenged the car rental facility fee in *Pope v. City of Phoenix*,[27] alleging that it was unconstitutional because the fee was covered by the anti-diversion provision but the proceeds were spent on the SkyTrain and rental car facility. The Arizona Court of Appeals—relying on the Arizona Supreme Court's decision in *Saban*—determined that the fee was not a

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18. *See id.*

19. *See Phoenix Approves Consolidated Facility Project*, AUTO RENTAL NEWS (Oct. 9, 2002), https://www.autorentalnews.com/68119/phoenix-approves-consolidated-facility-project [https://perma.cc/B6F2-E4D5].

20. *See id.*

21. *Id.*

22. *See id.*

23. Saban Rent-A-Car LLC v. Ariz. Dep't of Revenue (*Saban III*), 434 P.3d 1168, 1171 (Ariz. 2019).

24. *Id.* at 1171, 1174.

25. *Id.* at 1178.

26. *Id.*

27. 2023 WL 3962479, at *3 (Ariz. Ct. App. June 13, 2023).

prerequisite to or triggered by legally operating a vehicle in Arizona and therefore held that the state's anti-diversion provision did not apply.[28]

The Arizona Supreme Court did not explicitly rely on jurisprudence from Ohio—which had adopted an anti-diversion provision with similar language a few years before Arizona.[29] However, the Arizona Court of Appeals decision in *Saban*—which clearly informed the supreme court's reasoning—did.[30] Thus, Ohio's jurisprudence and, to a lesser degree, the jurisprudence from other jurisdictions is an important part of this story.

In this Article, I argue that the narrow interpretation the Arizona Supreme Court adopted in *Saban* contravenes its own interpretive standards, ignores Arizona's distinct legislative history, misreads and improperly relies on Ohio's jurisprudence, and ultimately severs the provision from its underlying purpose—that is, to implement the benefits theory of taxation and ensure that revenues raised from road users be dedicated to road uses. Indeed, the court's approach allows the legislature to circumvent the clear restriction found in the state's constitution by elevating form over substance, potentially putting Arizona's federal funding at risk.

The court adopted a narrow, precise, and technical definition for the broad constitutional language by inferring the limitation from examples of other covered taxes found in the legislative history. Instead, Arizona's courts should have looked to the broad statements of purpose found in the legislative history and adopted a case-by-case approach, as both Ohio and Maine courts did when construing their own, similar anti-diversion provisions.[31] Moreover, consistent with the benefits theory of taxation, the inquiry should focus on whom the tax targets, instead of the form the tax takes or the legislature's characterization of it.[32]

Part I provides a brief background of the Hayden-Cartwright Act and states' efforts to ensure their compliance with its anti-diversion requirements. Part II describes the legislative history of Ohio's provision and the Ohio courts' efforts to construe it. Part III describes the legislative history of Arizona's provision, the rental car surcharge, and the rental facility fee, as well as the Arizona courts' efforts to construe its anti-diversion provision and apply it to these taxes. Part IV offers a critique of Arizona's jurisprudence

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28. *Id.* at *5.

29. OHIO CONST. art XII, § 5a (1948).

30. Saban Rent-A-Car LLC v. Ariz. Dep't of Revenue (*Saban II*), 418 P.3d 1066, 1073–74 (Ariz. Ct. App. Mar. 13, 2018).

31. *See, e.g.*, Ohio Trucking Ass'n v. Charles, 983 N.E.2d 1262, 1267 (Ohio 2012); Portland Pipe Line Corp. v. Env't Improvement Comm'n, 307 A.2d 1, 13–14 (Me. 1973).

32. *Portland Pipe Line Corp.*, 307 A.2d at 13.

and explains how the cramped approach the courts adopted undermines the provision's purpose. Part V provides concluding thoughts.

I. THE HAYDEN-CARTWRIGHT ACT AND STATE CONSTITUTION ANTI-DIVERSION PROVISIONS

Until the early twentieth century, states were solely responsible for funding their own road construction and maintenance.[33] Starting in 1916, with the rise of motor vehicles and interstate automotive commerce, Congress began providing states with federal funds to build and maintain roads.[34] As states struggled with their finances during the Great Depression, Congress decided to provide states with additional road funds through the Hayden-Cartwright Act.[35] However, Congress worried that states would take the federal money and divert funds they would have otherwise spent on their roads to other purposes.[36] Accordingly, Congress required states receiving federal road funds to spend the revenues they raised from road users for road purposes, justifying this restriction by articulating a benefits theory of taxation and asserting that it was only fair and just that revenues extracted from road users be spent on the roads.[37]

This Part describes the key provisions in the Hayden-Cartwright Act that conditioned the receipt of federal highway funds and the states' efforts—typically in the form of constitutional anti-diversion provisions—to ensure that they complied with these conditions.

A. The Hayden-Cartwright Act

The Hayden-Cartwright Act was designed in the 1930s to bolster the economy and improve conditions for interstate trade.[38] Its main impact was to provide federal funds to states to be used to build and maintain their roads.[39] However, Congress did not write a blank check. Worried that states

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33. Richard F. Weingroff, *Federal Aid Road Act of 1916: Building the Foundation*, PUB. ROADS, Summer 1996, at 2.

34. *See* Federal Aid Road Act of 1916, ch. 241, § 1, 39 Stat. 355, 355–56.

35. *See* Hayden-Cartwright Act of 1934, ch. 586, § 1, 48 Stat. 993, 993.

36. *See id.* § 12.

37. *See id.*

38. *See* Richard F. Weingroff, *"Clearly Vicious as a Matter of Policy": The Fight Against Federal-Aid*, FED. HIGHWAY ADMIN. 113–14 (June 27, 2017), https://www.fhwa.dot.gov/infrastructure/clearly_vicious.pdf [https://perma.cc/V4LW-8SP3].

39. *See* Hayden-Cartwright Act § 12.

would divert their own state road funds for other purposes—as had indeed repeatedly happened[40]—Congress extended federal funding only to states

> that use at least the amounts now provided by law for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes.[41]

Congress set forth its reasoning for this restriction in the statute itself, stating that "it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways."[42] Although Congress did not use the term "benefits theory of taxation," this statement perfectly captures the idea that tax burdens—both in terms of who should be taxed and how much—should be imposed on those who receive the benefits of government spending.[43]

B. State Constitution Anti-Diversion Provisions

It is a truth universally acknowledged that tax revenues not specifically dedicated to a given purpose are in want of being diverted to fund whatever projects a legislature believes are most pressing.[44] Thus, despite the clear admonition found in the Hayden-Cartwright Act, state legislatures sometimes diverted road user revenues to non-road purposes.[45] To counter such

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40. U.S. PUB. ROADS ADMIN., REPORT OF THE CHIEF OF THE BUREAU OF PUBLIC ROADS 8 (1939), https://hdl.handle.net/2027/uc1.c104686963.

41. Hayden-Cartwright Act § 12; *see also* Franklin D. Roosevelt, Statement on Signing the Hayden-Cartwright Act (June 18, 1934), https://www.presidency.ucsb.edu/documents/statement-signing-the-hayden-cartwright-act [https://perma.cc/AXP3-7HE6] ("The Act provides that States, to be eligible for full participation in Federal Aid, must continue to use for roads at least whatever portion of their revenues from gasoline and other taxes on motor vehicles is now authorized by law to be expended for highway purposes.").

42. Hayden-Cartwright Act § 12.

43. *See* Dodge, *supra* note 1, at 399.

44. *See, e.g.*, OHIO SEC'Y OF STATE, PROPOSAL TO PROHIBIT THE EXPENDITURE OF MONEYS DERIVED FROM CERTAIN TAXES RELATING TO VEHICLES FOR OTHER THAN HIGHWAY AND RELATED PURPOSES (Nov. 4, 1947). A copy of the 1947 Ohio Voter Pamphlet is attached *infra* Appendix B. The words have been retyped to make them less blurry and easier to read, but the formatting remains the same.

45. *See, e.g.*, *id.*

temptation, ensure tax fairness, and safeguard federal highway funds, states began to amend their constitutions to prevent the legislatures from doing so.

Over time, all fifty states have imposed rules by custom, statute, or constitution that require funds raised from road users be spent on the roads.[46] As of 2024, thirty-five states have adopted such rules by constitutional provisions.[47] They break down into three general categories, though, of course, there are outliers. The first specifically identifies the taxes the provision covers; for example, fuel taxes, registration fees, and license taxes.[48] The second includes provisions that apply to charges "with respect to" the operation of motor vehicles.[49] The third category refers to "fees, excises and taxes relating to the registration, operation, or use of vehicles."[50]

When Arizona adopted its anti-diversion provision in 1952, twenty-one states had already done so.[51] With few exceptions,[52] courts had not extensively weighed in on the scope of these provisions. Since then, courts have addressed a number of these provisions, including in Ohio and Maine—which use the same "relating to" language as Arizona—as well as New Hampshire, West Virginia, and Colorado, which use the "with respect to" language.[53] Because Arizona courts relied heavily on Ohio's jurisprudence and did not mention case law from other jurisdictions, I discuss Ohio's provision and case law at length in Part II. I discuss the provisions and case law from other jurisdictions where relevant.

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46. *Saban III*, 434 P.3d 1168, 1175 (Ariz. 2019).

47. *See infra* Appendix A (listing the states with anti-diversion provisions, the year in which the provision was enacted, and the type of provision—naming specific taxes or using different versions of broader language).

48. These states include Michigan, Idaho, North Dakota, Iowa, Florida, Washington, Pennsylvania, Texas, and Georgia. *See infra* Appendix A.

49. This includes Colorado, Nevada, and South Dakota. *See infra* Appendix A.

50. This includes West Virginia, Maine, Kentucky, Ohio, and Massachusetts. *See infra* Appendix A.

51. ARIZ. SEC'Y OF STATE, *supra* note 11, at 4.

52. *See, e.g.*, Opinion of the Justices, 51 A.2d 836, 839 (N.H. 1947) (determining that New Hampshire's anti-diversion provision covered parking meter revenues).

53. The scope of provisions from Massachusetts, Kentucky, Alabama, Wyoming, and Utah, all of which used the same "relating to" language as Arizona, has never been adjudicated.

A number of cases consider whether specific types of spending qualify under the provisions, but that question is beyond the scope of this Article. *See, e.g.*, *In re* Opinion of Justices, 85 N.E.2d 761, 763 (Mass. 1949) (determining that spending on subways was inappropriate under Massachusetts's version of the provision); Keck v. Manning, 231 S.W.2d 604, 607 (Ky. 1950) (determining that payments for the distribution of road maps, booklets, photographs, and advertisements of state's highways in motor magazines and national magazines were appropriate under Kentucky's version of the provision); Fredricks v. McMillan, 358 So.3d 701, 706–07 (Ala. Civ. App. 2020) (determining that the term "highways" includes the Mobile Ship Channel).

II. OHIO

A. Ohio's Anti-Diversion Provision

In 1947, Ohio voters approved the addition of article XII, section 5a to the state constitution. Section 5a provides in relevant part:

> No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes . . . .[54]

Despite the broad language used in the provision itself, the Ohio voter pamphlet took a narrow view of what was to be covered. The Ohio pamphlet specifically—and only—called out "automobile license and gas tax money" as being covered by the proposed constitutional amendment.[55] For instance, the first line of the pamphlet states that it is a "PROPOSAL TO PROHIBIT THE EXPENDITURES . . . FROM CERTAIN TAXES RELATING TO VEHICLES FOR OTHER THAN HIGHWAY AND RELATED PURPOSES."[56] Among the arguments in favor of the amendment, the pamphlet states:

> This Amendment simply says you want your automobile license and gas tax money to go for better roads and streets.
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> . . . .
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> Ohio originally promised that automobile license and gas tax funds would go for roads, streets, and related purposes. But temptation was too great and millions of these special tax dollars have been and are being spent for other purposes.[57]

The pamphlet lacks any broad statements about tax fairness, like those found in the Hayden-Cartwright Act. Nor did it promise that all revenues raised from road users would be dedicated to road uses.

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54. OHIO CONST. art. XII, § 5a (1948).
55. OHIO SEC'Y OF STATE, *supra* note 44.
56. *Id.*
57. *Id.*

B. Case Law Construing the Scope of Ohio's Anti-Diversion Provision

The Ohio courts have considered the scope of Ohio's anti-diversion provision in three cases, two of which were decided a day apart. In *Ohio Trucking Association v. Charles*, the Ohio Supreme Court was asked to determine whether the provision covered revenues from a law requiring the state's registrar of vehicles to charge a $5 fee for providing an abstract of driver information to insurance companies.[58] The court found little guidance in the broad language of the text itself and concluded that it must look to the law's objectives to determine its meaning.[59] Thus, it turned to the 1947 voter pamphlet and a report of the Ohio Constitutional Revision Committee from 1972 ("the 1972 Report") for evidence of intent.[60]

As noted above, the Ohio voter pamphlet lacked any broad statement of purpose. Instead, it highlighted only "automobile license and gas tax money" as covered by the proposed constitutional amendment.[61] The 1972 Report similarly identified specific taxes in describing the provision's scope, stating: "all of the revenues derived from the registration of motor vehicles and from the taxes imposed on the purchase of fuels for motor vehicles be expended on the requirements of the state's highway system."[62] While this report post-dates enactment and is not properly legislative history, it supports the conclusion that Ohio's provision was targeted at specific taxes, despite the broad language used in the provision.

The court acknowledged that the abstract fees were "related to" automobile use, in the broadest sense of the term, but rejected such a reading as too "extreme."[63] Instead, the court determined that the abstract fee was less related to operating or using vehicles than it was to the insurance certification process.[64] To support this conclusion, the court noted that abstracts were not necessary for a large portion of the driving public and were not "triggered by the registration, operation, or use of a vehicle."[65]

Despite these observations and evidence in the legislative history that voters may have had a narrow view of the anti-diversion provision's scope, the Ohio Supreme Court declined to define the term "relating to" or limit its

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58. 983 N.E.2d 1262, 1263 (Ohio 2012).

59. *Id.* at 1266 (citing N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 656 (1995)).

60. *Id.* at 1266–67.

61. *Id.* at 1266.

62. 4 OHIO CONSTITUTIONAL REVISION COMMISSION FINANCE AND TAXATION COMMITTEE 1755 (Sept. 22, 1972) [hereinafter 1972 OHIO REPORT].

63. *Ohio Trucking*, 983 N.E.2d at 1267.

64. *Id.*

65. *Id.*

meaning to the specific taxes mentioned in the legislative history or even taxes that shared the attributes of those taxes.[66] Thus, while it noted that the charge for the abstract was not imposed upon all drivers and that getting the abstract was not "triggered by" driving, the court did *not* hold that taxes had to have these attributes to be covered.[67] Rather, the court stated that it would construe the term as it came up in the context of specific taxes, taking a case-by-case approach that focused on whether the challenged tax related more to the operation or use of automobiles or to something else.[68]

The very next day, the Ohio Supreme Court issued its decision in *Beaver Excavating Co. v. Testa*, which involved a commercial-activity tax ("CAT") applied to the gross receipts from motor-fuel sales.[69] The court adopted a broad reading of the term "relating to" in concluding that the state's anti-diversion provision applied to the CAT, even though it was not structured as an excise tax imposed on fuel sales.[70] In particular, the court indicated that the broad term was designed to prevent legislatures from avoiding the provision's reach by elevating form over substance.[71]

The trial and appellate courts in *Beaver Excavating* had concluded that article XII, section 5a did *not* cover the CAT because it was a business privilege tax imposed on the gross receipts of gas sellers, as opposed to an excise tax on gas.[72] The Ohio Court of Appeals' majority opinion focused on the form of the tax, noting that the anti-diversion provision was historically interpreted to apply to specific taxes described in the pamphlet and in the 1972 Report.[73] The court distinguished these specific taxes from general taxes, such as the CAT and determined that the CAT was not "related to" a tax on fuels.[74]

Judge Julia L. Dorrian concurred with the result, relying heavily on the benefits theory of taxation to support her conclusion. She argued that Ohio's anti-diversion provision "was intended to restrict the use of revenues from taxes and fees *targeted at* users of public roads, irrespective of whether they were classified as general or specific taxes."[75] Examining the taxes that the

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66. *Id.*
67. *Id.*
68. *Id.*
69. *Beaver Excavating II*, 983 N.E.2d 1317 (Ohio 2012).
70. *Id.* at 1326.
71. *Id.*
72. *See id.* at 1320; *see also* Beaver Excavating Co. v. Levin (*Beaver Excavating I*), No. 10AP-581, 2011 WL 3074417, at *3–8 (Ohio Ct. App. July 26, 2011).
73. *Beaver Excavating I*, 2011 WL 3074417, at *8.
74. *Id.*
75. *Id.* at *9 (Dorrian, J., concurring).

anti-diversion provision admittedly covered, she noted that the charges were intended to be—and were—passed along to customers.[76] In contrast, the CAT was not passed along to customers, suggesting it should not be covered.[77]

To support her approach, Judge Dorrian cited *Portland Pipe Line Corp. v. Environmental Improvement Commission*, a case construing Maine's anti-diversion provision.[78] Maine had used the same "relating to" language in its provision as Ohio, and later Arizona.[79] In *Portland Pipe Line*, the court determined that a petroleum tax imposed on oil exporters was not targeted at road users and therefore was not covered by the state's anti-diversion provision.[80] Judge Dorrian concluded that Ohio's anti-diversion provision did not cover Ohio's CAT because "it is far from clear that the CAT falls upon drivers using the public roads. It is clear, however, that the CAT is not targeted at drivers using the public roads."[81]

The Ohio Supreme Court reversed, adopting a broad reading of the term "relating to":

> [T]he phrase "relating to" is plainly intended to be interpreted broadly. First, the drafters of the amendment employed a broad term, "derived from," to connect "moneys" with "fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles." The evident purpose for using this particular terminology is to ensure that any revenue from these taxes is clearly within the scope of Section 5a's restriction on its use.[82]

The court further stated:

> Likewise, the term "relating to" broadly connects "fees, excises, or license taxes" to the sources from which the revenue is to be "derived," which are the "registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles." The evident purpose here was to ensure that these objects of fees and taxation would not be narrowed or diminished through any legislative efforts to statutorily redefine the terms as an attempted end-run to the amendment.[83]

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76. *Id.* at *9–12.
77. *Id.* at *13.
78. *Id.* at *12 (citing 307 A.2d 1 (Me. 1973)).
79. *Id.* at *12 (citing ME. CONST. art. IX, § 19).
80. 307 A.2d at *12–14; *see also infra* Section IV.A.6 (discussing this case more fully).
81. *Beaver Excavating I*, 2011 WL 3074417, at *14 (Dorrian, J., concurring).
82. *Beaver Excavating II*, 983 N.E.2d 1317, 1325 (Ohio 2012) (footnote omitted).
83. *Id.* at 1326.

The court concluded that the CAT bore a "logical and close connection" to fuel taxes clearly covered by article XII, section 5a and found that the tax's form—a business privilege tax—was not legally relevant.[84]

Notably, the court did not address Judge Dorrian's argument that the anti-diversion provision was designed to cover taxes targeting road users.[85] Nor did it cite *Portland Pipe Line*, which similarly focused on the intent of the drafters and who actually paid the tax.[86] As a result, the benefits theory of taxation played no part in the Ohio Supreme Court's decision, effectively dropping out of the analysis for those who looked only to that court's decision in *Beaver Excavating*.

The third case is *Fowler v. Ohio Department of Public Safety*, in which the Ohio Court of Appeals was asked to decide whether article XII, section 5a covered a reinstatement fee charged to those who had been caught driving without insurance.[87] The *Fowler* court reviewed both *Ohio Trucking* and *Beaver Excavating* and concluded that the fee was not covered, noting that the tax at issue in *Beaver Excavating* (the CAT imposed on fuel dealers) was imposed on *all* taxpayers, whereas the one in *Ohio Trucking* (the abstract fee) was not.[88] The court also observed that all motorists had previously paid vehicle registration fees, which the provision clearly covered. Consistent with the approach announced in *Ohio Trucking* and *Beaver Excavating*, the court

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84. *Id.* This conclusion echoes the jurisprudence in Michigan, construing that state's anti-diversion provision:

> The designation given by the Legislature to a tax is not controlling, although entitled to be given great weight. In passing upon the constitutionality of a statute, the court looks to the operation of the tax imposed rather than to the labels or descriptive words used to define the tax.

Se. Mich. Transp. Auth. v. Sec'y of State, 304 N.W.2d 846, 850–51 (Mich. 1981) (citations omitted); *see also* Jordan v. Dep't Motor Vehicles, 89 Cal Rptr. 2d 333 (Ct. App. 1999) (determining that a vehicle smog impact fee was not a sale or use tax, exempt from that state's anti-diversion provision, despite being designated as such).

85. *See Beaver Excavating II*, 983 N.E.2d at 1317; *Beaver Excavating I*, 2011 WL 3074417, at *9 (Dorrian, J., concurring).

86. *See Beaver Excavating II*, 983 N.E.2d at 1317.

87. 95 N.E.3d 766 (Ohio Ct. App. 2017).

88. *Id.* at 770–72. The suggestion that a tax must be charged to all to be covered by an anti-diversion provision contrasts with New Hampshire's approach, which found that its provision covered parking meter revenues. *In re* Opinion of the Justices, 51 A.2d 836 (Me. 1947). While all who park at a metered spot must pay, not all motorists do so. *Id.*

determined that the fee was more closely related to the failure to obtain insurance than to the operation or use of a vehicle.[89]

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The jurisprudence construing Ohio's anti-diversion provision is deeply rooted in its distinct legislative history, which indicated that the provision's scope was narrower than the broad constitutional language suggested. Nonetheless, the court acknowledged that broad language by refusing to limit the taxes covered to those identified in the legislative history and resisting the temptation to adopt a rigid rule. Rather, the court adopted a liberal reading of the term "related to" and committed to considering each tax on a case-by-case basis to determine whether the given tax was more related to road use or some other activity. In adopting this approach, it ensured that the legislature could not circumvent the provision by elevating the form of a tax over its substance and kept alive the link between the provision's text and purpose.

III. ARIZONA

A. Arizona's Anti-Diversion Provision

In 1952, Arizona voters added article 9, section 14 to the state constitution. This provision, which uses the same operative language as Ohio's, provides in relevant part:

> No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets or to fuels or any other energy source used for the propulsion of vehicles on the public highways or streets, shall be expended for other than highway and street purposes including the cost of administering the state highway system . . . .[90]

Unlike the voter pamphlet in Ohio, Arizona's voter pamphlet made clear that the proposal was motivated by the Hayden-Cartwright Act's concern for tax fairness. The pamphlet stated broadly that the provision's purpose was to

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89. As discussed in Section IV.A.6, *infra*, this conclusion is at odds with the conclusion reached in *In re Opinion of the Justices*, 152 A.2d 494 (Me. 1959), which held that Maine's anti-diversion provision—which used the same language as Ohio's—covered a $15 "premium" required of those registering a car without insurance. It is hard to see why Maine's uninsured fee was covered, while Ohio's was not. In both cases, a subset of drivers had to pay the fee to be able to drive.

90. ARIZ. CONST. art. 9, § 14.

"INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY."[91] The pamphlet further stated:

> [T]he road user taxes are fair because they are based on benefits received by the taxpayer. The user pays as he drives. If not used for road purposes, these user taxes become unfair because they are not based on benefits received, ability to pay, or the taxpayer's interest.[92]

The pamphlet also made clear that the provision was designed to ensure the legislature did not endanger the state's receipt of federal funds by diverting road user revenues for other purposes: "WHY JEOPARDIZE FEDERAL AID BY ALLOWING ANY DIVERSION OF ROAD USER TAXES TO OTHER THAN ROAD PURPOSES?"[93]

To that end, the pamphlet apprised voters that (1) bills had been introduced in Arizona to divert road funds, (2) diversions in states without anti-diversion provisions had increased significantly in the preceding four years, and (3) twenty-one other states—including many in the western United States—had adopted similar provisions.[94]

The voter pamphlet further informed voters that the amendment would not affect *existing* sources or uses of revenue.[95] Thus, "state gasoline and diesel taxes, registration fees, unladen weight fees on common and contract motor carriers, and motor carrier taxes based on gross receipts" would continue to be dedicated to road uses.[96] As the Arizona Supreme Court has explained, the motor carrier tax was imposed on companies that "look[ed] directly to the inordinate use of public highways to realize pecuniary benefits."[97]

At the time, Arizona also imposed a broad Transactions Privilege Tax ("TPT") on the "gross proceeds of sales" for virtually every business in Arizona.[98] The TPT is Arizona's version of a sales tax, but it is imposed on businesses as opposed to consumers.[99] Subsection f(2) included "[h]otels . . . dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile rental services, . . . and collection agencies."[100] Revenues from the TPT were not dedicated to road uses in 1952. Rather, as

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91. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. Campbell v. Commonwealth Plan, Inc., 422 P.2d 118, 121 (Ariz. 1966).
98. *See* ARIZ. CODE ANN. § 73-1303(a) (1939).
99. *See id.*
100. *Id.* § 73-1303(f)(2).

the Arizona Supreme Court explained in a 1941 case, the TPT's purpose was "the obtaining of revenues for the state's general fund."[101] Moreover, the TPT was not mentioned in the pamphlet.[102] Accordingly, all understood that the proposed anti-diversion provision would not cover this tax.

The pamphlet did not address how any *future* taxes might be treated. However, the statements found in the pamphlet that *all* revenues derived from road users would be dedicated to road uses and the concern that road users receive the benefits of the taxes they paid—to say nothing of the broad language found in the provision itself—strongly suggested that the anti-diversion provision would not be limited to existing taxes or even specific types of taxes.[103] Legislatures are skilled at circumventing rules, and the broad formulation found in both the constitutional language and promotional pamphlet indicate a desire to prevent the legislature from evading the provision's restrictions and undermining its promise that revenues extracted from road users would be spent on the roads.

B. Cardinals Stadium and the Car Rental Tax

When the St. Louis Cardinals first moved to Arizona—becoming the Arizona Cardinals—they played football in Sun Devil Stadium at Arizona State University.[104] However, they soon found the stadium inadequate for their needs. They initially sought to build a new stadium in Mesa, but, in May 1999, voters rejected the taxes necessary to fund it.[105] To keep the Cardinals from leaving the state, Governor Hull created the Governor's Stadium Plan "B" Advisory Task Force to explore other funding options, noting that her only preconceived notion was that "any public financing will minimize the impact on the average Arizonan, particularly those that choose to not support professional sports."[106]

Like the anti-diversion provision, Governor Hull's desire to minimize the impact for those who do not support professional sports reflects a benefits theory of taxation. Professional sports teams primarily benefit fans and

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101. O'Neil v. Ariz. Horsemen's Ass'n, 114 P.2d 894, 895 (Ariz. 1941).

102. *See* ARIZ. SEC'Y OF STATE, *supra* note 11.

103. *See id.* at 3.

104. *Arizona Cardinals Team History*, PRO FOOTBALL HALL OF FAME, https://www.profootballhof.com/teams/arizona-cardinals/team-history [https://perma.cc/3USU-Y2GM].

105. *See* Letter from Jane Dee Hull, *supra* note 15.

106. *Id.*

businesses that cater to them.[107] Under the benefits theory, taxes to fund the stadium should be imposed primarily on those who benefit from it.

In January 2000, the Task Force issued a Final Report in which it proposed a public/private partnership, where the public money would come from "a modest bed tax/car rental tax increase, paid primarily by out-of-state visitors."[108] Furthermore, it highlighted that "[o]nly a portion of the monies raised through these modest tax increases will go toward stadium construction," with the rest going "directly back into tourism promotion and the Cactus League, doubling the Arizona tourism promotion budget in the first year."[109] The report noted both the governor's directive and Task Force's findings that "the capital plan should not include any general taxes on the Arizona public. Any new taxes that are required should be paid primarily by nonresident visitors to the state."[110]

The Legislature drafted—and Maricopa County voters approved—Arizona Revised Statutes ("A.R.S.") § 5-839, which, among other things, imposed a 3.25% surcharge on gross income from car rentals in Maricopa County, with a minimum $2.50 charge.[111] The tax applied to short-term (less than one year) rentals of vehicles "designed to operate on the streets and highways of this state."[112] Because the amount charged is based on gross income, the amount of tax paid varied with the length of the rental, thus effectively making it a rough proxy for road use.

The statute imposed only the minimum $2.50 charge for those who rented cars because their own car was being repaired,[113] a move designed to ensure that the tax was paid almost entirely by out-of-state drivers, as was clearly laid out in the Task Force report and pamphlet promoting the statute.[114] While nominally imposed on the car rental companies, the surcharge was intended to be—and was—passed on to the consumer and specifically called out on

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107. *See generally* David Zimmerman, *How Do Professional Sports Teams Impact the Local Economy?*, EXPENSIVITY (Oct. 17, 2023), https://www.expensivity.com/professional-sports-teams-and-the-local-economy [https://perma.cc/RS7H-TWV4] (discussing the way professional sports teams benefit the fans and businesses in their communities).

108. GOVERNOR'S STADIUM PLAN "B" ADVISORY TASK FORCE, *supra* note 16, at 2.

109. *Id.*

110. *Id.* at 11.

111. ARIZ. REV. STAT. ANN. § 5-839(B) (2010).

112. *Id.* § 5-839(C).

113. *Id.* § 5-839(B)(2).

114. *See* GOVERNOR'S STADIUM PLAN "B" ADVISORY TASK FORCE, *supra* note 16; Publicity Pamphlet Sample Ballot for Proposition 302 from the Ariz. Tourism & Sports Auth. 2, 10 (Nov. 7, 2000) (on file with author) (explaining that "the surcharge on car rentals targets visitors to the State," and "[t]he tax burden will fall primarily on Visitors to the County").

their bills.[115] Customers in Maricopa County could not rent cars to be driven on Arizona's roads without paying the tax.

At the same time, voters approved A.R.S. § 5-840, which imposed a tax on the gross profits of those engaged in a hotel business.[116] As with the rental car surcharge, this tax fell primarily on out-of-state visitors.[117] Thus, while the taxes complied with Governor Hull's desire not to impose burdens on Arizonans who did not partake of professional sports, it did not fully comport with the benefits theory of taxation because, aside from those who traveled to Arizona to attend sporting events, visitors who paid the taxes did not benefit from the use of their revenues.

The first challenge to this funding regime came from car rental and hotel customers who were forced to pay these taxes. In *Karbal v. Arizona Department of Revenue*, the Arizona Court of Appeals held that the customers lacked standing to challenge the provisions.[118] The court found that the two taxes were more in the nature of a transaction privilege tax than a sales tax.[119] Sales taxes are imposed on customers but collected and remitted by businesses.[120] In contrast, transaction privilege taxes are excise taxes imposed on businesses for the privilege of doing business in Arizona or its political subdivisions.[121] Although the taxes were targeted at and passed along to customers, the court held that only the people or entities on whom taxes were nominally imposed had standing to challenge a tax.[122] Accordingly, the court determined that customers lacked standing to challenge the taxes.[123]

This led to a second challenge to the car rental tax (but not to the hotel tax) by Saban Rent-a-Car, LLC and other car rental companies (collectively, "Saban"). Saban initially filed an administrative claim with the Arizona Department of Revenue ("ADOR") for a refund of amounts assessed pursuant to A.R.S. § 5-835(B), alleging that the tax violated both the U.S. Constitution's Dormant Commerce Clause[124] and the Arizona Constitution's

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115. Receipt, Alamo Car Rental (Apr. 22, 2019) (on file with author).

116. ARIZ. REV. STAT. ANN. § 5-840 (2002).

117. *See* Karbal v. Ariz. Dep't of Revenue, 158 P.3d 243, 244 (Ariz. Ct. App. 2007).

118. *Id.* at 246.

119. *Id.* at 245.

120. *See id.*

121. *Id.*

122. *Id.* at 245–46.

123. *Id.* at 246. The court also held that a decision rejecting the taxes would not redress the customers' alleged injuries because any refund would go to the car rental and hotel companies, which had no legal obligation to refund the customers. *Id*.

124. U.S. CONST. art. I, § 8, cl. 3. The constitutional text gives Congress the ability to "regulate commerce with foreign nations, among states, and with the Indian tribes." *Id.* Courts

anti-diversion provision found in article 9, section 14.[125] ADOR rejected the claim on both counts, and Saban filed suit in Arizona's tax court.[126]

1. The Arizona Tax Court Decision

Arizona's tax court upheld ADOR's decision regarding the Dormant Commerce Clause but found that the tax violated Arizona's anti-diversion provision.[127] The tax court noted that article 9, section 14 "restricts the use not only of taxes *on* vehicles, but of taxes *relating to* vehicles."[128] Thus, even though the car rental tax was an excise tax structured as a TPT and imposed on car rental companies—a structure similar to the tax at issue in *Karbal*[129]—the court concluded that the car rental surcharge was related to the operation or use of vehicles on Arizona's roads and therefore subject to the anti-diversion provision.[130] As a result, it held that using revenues from that tax to fund Cardinals Stadium and other sports related activities violated Arizona's constitution.[131] The defendant appealed.[132]

2. The Arizona Court of Appeals Decision

The Arizona Court of Appeals affirmed the tax court's Dormant Commerce Clause holding but reversed its holding regarding the anti-diversion provision.[133] The court rejected a broad reading of the term "relating to," instead finding that article 9, section 14 "applies to a tax or fee that is a

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have held that this language implicitly prohibits states from discriminating against or burdening interstate commerce. *See, e.g.*, Comptroller of the Treasury v. Wynne, 575 U.S. 542, 545 (2015) (holding Maryland's tax scheme unconstitutional because it would disadvantage interstate commerce if applied identically in every state); West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 194 (1994) (holding Massachusetts' milk tax unconstitutional because it targeted out-of-state dairy farmers and hindered interstate commerce). In this case, the claim was that a tax directed at out-of-state visitors discriminated against residents of other states and therefore unconstitutionally burdened interstate commerce. Whether the challenged tax violates the Dormant Commerce Clause is beyond the scope of this Article, which focuses solely on the state anti-diversion provision.

125. *Saban III*, 434 P.3d 1168, 1170 (Ariz. 2019).

126. *Id.* at 1170–71.

127. Saban Rent-A-Car LLC v. Ariz. Dep't of Revenue (*Saban I*), No. TX 2010-001089, 2014 WL 12738281, at *3 (Ariz. Tax Ct. June 17, 2014).

128. *Id.* at *2.

129. Karbal v. Ariz. Dep't of Revenue, 158 P.3d 243, 245 (Ariz. Ct. App. 2007).

130. *Saban I*, 2014 WL 12738281, at *2.

131. *Id.* at *3.

132. *See Saban II*, 418 P.3d 1066, 1070 (Ariz. Ct. App. 2018).

133. *Id.* at 1081.

prerequisite to, or triggered by, the legal operation or use of a vehicle on a public thoroughfare."[134] The court began by acknowledging that a tax on rental car companies is "related to" the operation or use of a vehicle on Arizona roads, at least in the broadest sense of the term.[135] However, the broadest reading of the term could encompass a tax on road maps at gas stations or on road-side restaurants that no one contended were covered.[136]

Following the analytical approach laid out in the cases construing Ohio's similarly worded anti-diversion provision, the Arizona Court of Appeals set out to determine the scope of Arizona's provision from constitutional text and legislative history.[137] To be clear, the court's task was to determine whether the surcharge at issue in that case fell within the anti-diversion provision's ambit. The court did not need to develop a rule for all cases. Nonetheless—and contrary to the approach taken in Ohio—it proceeded to do just that.

The court began with a close textual reading of constitutional language that assumed the drafters carefully chose the words they used. The court found that the broadest reading of "relating to" would render other language in the provision superfluous.[138] In particular, the provision covers both taxes "relating to" (1) the "registration, operation, or use of vehicles" and (2) "fuels or any other energy source used for the propulsion of vehicles."[139] The broadest reading of "relating to" would encompass fuel taxes, rendering their inclusion in the provision unnecessary.[140] However, acknowledging that "relating to" cannot have its broadest possible meaning does not indicate the term's boundaries or provide a limiting principle.

The court then turned to the provision's purpose as set forth in the voter pamphlet, which was to ensure tax fairness and ensure the state would receive federal funds under the Hayden-Cartwright Act.[141] However, rather than focus on the sweeping promises made about the use of road use revenues, the court focused on statements regarding the treatment of existing taxes as evidence of intent.[142] The pamphlet indicated that no changes to use of existing revenues would occur and identified the existing taxes that the provision would cover.[143] This list did not include an existing TPT, which

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134. *Id.* at 1075.
135. *Id.* at 1071.
136. *See id*. at 1071–72.
137. *See id.* at 1073–81.
138. *Id*. at 1071–72.
139. *Id.* at 1071.
140. *Id.*
141. *Id.* at 1072; *see* ARIZ. SEC'Y OF STATE, *supra* note 11, at 4.
142. *See Saban II*, 418 P.3d at 1072.
143. *Id.*

applied to car rental businesses, among many others.[144] The court focused on the form of the tax, including the fact that it was levied on a business and triggered by renting a car, concluding that the surcharge was more related to renting a car than the operation or use of one.[145]

However, the court did not simply stop there. Purportedly relying on Ohio's jurisprudence, discussed in Part II of this Article, the Arizona Court of Appeals adopted a narrow, technical, and rigid interpretation for the term "relating to" that would govern all future cases—the term would *only* cover taxes that were a "prerequisite to, or triggered by, the legal operation or use of a vehicle on a public thoroughfare."[146] While the provision certainly covers such taxes, the court effectively ruled that Arizona's anti-diversion provision covers *only* such taxes, essentially limiting the provision's scope to registration and license fees, as well as the motor carrier tax.

In other words, the court turned an observation about the nature of the covered taxes existing when the provision was passed into a hard and fast rule, leaving little room to consider whether *new* taxes targeted at road users—but structured differently—might be covered. In essence, it elevated form over substance. Given the definition it adopted, the court concluded that Arizona's anti-diversion provision did not cover the surcharge.[147] The plaintiffs appealed.[148]

3. The Arizona Supreme Court Decision

On appeal, the plaintiffs argued that the benefits theory of taxation, which explicitly motivated the provision's passage, could serve as a limiting principle for the admittedly broad term "relating to."[149] At the very least, it should inform the court's analysis by focusing the court on whether a challenged tax was targeted at road users as such.[150] Consistent with the appeals court's approach, the Arizona Supreme Court concluded that the phrase "fees, excises, or license taxes relating to registration, operation, or use of vehicles" only applied to extractions that were "imposed as a prerequisite to, or triggered by, the legal operation or use of a vehicle on a

144. *See id.*
145. *See id.* at 1074.
146. *Id.* at 1075.
147. *Id.*
148. *Saban III*, 434 P.3d 1168, 1171 (Ariz. 2019).
149. *Id.* at 1175–76.
150. *See id.*

public road."[151] Accordingly, the court concluded that the provision did not cover the rental car surcharge.[152]

a. The Legal Standard

The court began by stating the legal standard for construing constitutional language, noting that the goal is to determine and effectuate the electorate's intent.[153] If that can readily be done from the text alone, no further analysis is required.[154] The court warned against focusing on fine semantics, grammatical distinctions, legalistic doctrine, or parsing sentences, all of which could lead to results at odds with the framers' objectives.[155] The court also warned against hypertechnical constructions that could frustrate legislative intent.[156]

b. The Plain Language Argument

After reviewing the interpretive standards, the court began its textual analysis by noting that the term "relating to," standing alone, is quite broad.[157] However, as the plaintiffs conceded, the term was not all encompassing.[158] For instance, no one argued that the provision covered taxes on auto-repair shops or roadside diners. The court accepted the concession and confirmed it with a close reading of the provision's language, focusing, as the court of appeals had, on the mention of fuel taxes.[159] The court noted that, if "relating to" had its broadest meaning, there would have been no need to separately call out fuel taxes because such taxes are clearly related to the use or operation of motor vehicles.[160] The court rejected the notion that the drafters had taken a belt and suspenders approach, finding instead that the drafters carefully chose their words.[161]

However, determining that the scope of "relating to" must be limited provides no guidance as to *how* it should be limited.[162] Thus, the court had to look beyond the provision's language.

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151. *Id.* at 1178.
152. *Id.*
153. *Id.* at 1174.
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.*
159. *See id.* at 1174–76.
160. *See id.* at 1176.
161. *Id.*
162. *Id.*

c. Legislative History and Historical Practice

The court identified the provision's legislative history and historical practice as the key sources of evidence for the phrase's meaning. The specific evidence the court considered included the Hayden-Cartwright Act, the 1952 voter pamphlet, the taxes in existence when the provision was added to the constitution, and how those taxes were treated under the new provision.[163] The court began with the voter pamphlet.[164] Like the provision itself, the voter pamphlet does *not* state that the provision will apply only to specific taxes or even to specific categories of taxes. Rather, it states broadly that the provision's purpose was to "INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY."[165] It further explains that "the road user taxes are fair because they are based on benefits received by the taxpayer."[166]

Plaintiffs argued that these broad statements—reflecting a benefits theory of taxation—were clear evidence of the provision's purpose, and that the benefits theory could act as a limiting principle and guide for how to construe the term "relating to" and determine which taxes the anti-diversion provision covered.[167] The court rejected the benefits theory as a guiding principle, claiming that it could not help the court draw a line between the car rental surcharge and allegedly similar taxes on "car sale dealers, automotive repair shops, and the like."[168]

Instead, the court focused on what the pamphlet said about the treatment of *existing* taxes under the proposed provision.[169] The pamphlet noted that the revenues from registration fees, unladen weight fees on common and contract motor carriers, and motor carrier taxes based on gross receipts were currently dedicated to road uses and assured voters that the proposed anti-diversion provision would not redirect revenues from these taxes away from the roads.[170] The court observed that the taxes then covered were all "prerequisite to" or "triggered by" the legal operation or use of vehicles on Arizona roads.[171] It inferred from these examples that the term "relating to" should be narrowly construed to cover *only* taxes with similar attributes.[172]

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163. *See id.* at 1175–78.
164. *See id.* at 1175–77.
165. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.
166. *Id.* at 4.
167. *Saban III*, 434 P.3d at 1175–76.
168. *Id.* at 1177.
169. *Id.* at 1176.
170. *See* ARIZ. SEC'Y OF STATE, *supra* note 11, at 3–4.
171. *Saban III*, 434 P.3d at 1176.
172. *See id.* at 1176–77.

In addition to the evidence of what existing taxes the provision covered, the court looked to taxes that were not covered, including a TPT that applied to car rental companies, among a long list of other types of businesses, the revenues of which were not dedicated to road uses.[173] Plaintiffs had argued that the rental car surcharge could be distinguished from this tax because it was specifically targeted at car rental customers and not part of a broad tax that happened to include car rental companies.[174] Rather, plaintiffs argued that the surcharge was more akin to the motor carrier tax, which was clearly covered.[175] The court disagreed, finding that the surcharge was closer to the excluded TPT and therefore not covered.[176]

Finally, the court considered the Hayden-Cartwright Act, which the pamphlet identified as one of the motivations for Arizona's anti-diversion provision.[177] Like the pamphlet, the Hayden-Cartwright Act articulated a benefits theory of tax fairness that required revenues raised from road users be spent on the roads.[178] And, as the dissent noted, the act used quite broad language in describing the kinds of taxes for which revenues were required to be dedicated to road uses.[179] After listing vehicle registration fees, licenses, and gasoline taxes, the statute further included "*other special taxes on motor-vehicle owners and operators of all kinds*."[180] The Hayden-Cartwright Act clearly contemplated that the restriction would cover more than the specifically enumerated taxes and did not identify a particular type of tax. The majority responded by arguing that the voters were likely unaware of the Hayden-Cartwright Act's language referring to "special taxes on motor-vehicle owners and operators of all kinds."[181] As discussed more fully below, the drafters were certainly aware of that language and indeed echoed it in their choice of the expansive "relating to" language found in the anti-diversion provision they proposed, as well as the broad language they used in the voter pamphlet.

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173. *See id.*
174. *Id.*
175. *Id.*
176. *Id.* at 1177.
177. *Id.* at 1177–78.
178. *Id.* at 1177.
179. *Id.* at 1180 (Bolick, J. concurring in part and dissenting in part).
180. Hayden-Cartwright Act of 1934, ch. 586, § 12, 48 Stat. 993, 995 (emphasis added).
181. *See Saban III*, 434 P.3d at 1178.

C. Sky Harbor Airport and the Car Rental Tax

In 2000, Phoenix Sky Harbor Airport sought to replace its on-site car rental facilities with a new off-airport car rental facility, which would eventually be connected to airport by the SkyTrain.[182] The city of Phoenix decided to pay for both the Rental Car Facility and the PHX SkyTrain system with a charge on those who rented cars at the airport, which it enacted in 2001.[183] Unlike the tax at issue in *Saban*, which is nominally imposed on rental-car companies but targeted at and passed along to renters, the rental facility charge is assessed *directly* on customers. Thus, the charge is not a transaction privilege tax, like the *Saban* tax. Nor did Phoenix impose additional taxes on other businesses (e.g., hotels) to fund the car rental facility, arguably muddying the waters as to whether this was a tax targeted at road users. However, like the tax in *Saban*, the amount of tax owed ($6 per vehicle per day the car was rented)[184] was determined based on car—as opposed to facility—usage.

Plaintiffs, customers forced to pay the charge,[185] brought two cases claiming that the rental facility charge violated Arizona Constitution article 9, section 14 because the proceeds of that tax were used to fund a rental car facility and sky train at the airport, and not on road uses specified in that provision.[186] The city of Phoenix prevailed both at trial and on appeal.[187]

The Arizona Court of Appeals began by considering the nature of the tax and its relation to road use, suggesting that the tax was a charge for facility use instead and speculating whether it was really the customer's responsibility.[188] However, ultimately, the court was constrained by *Saban*'s holding that the provision only applied to "a tax or fee '[1] imposed as a prerequisite to, or [2] triggered by, the legal operation or use of a vehicle on

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182. Report from David Krietor, Acting Aviation Dir., City of Phoenix, to Marsha Wallace, Deputy City Manager, City of Phoenix (Apr. 26, 2000) (on file with author).

183. PHX., ARIZ., CITY CODE § 4-79(c)(1) (2024).

184. *Id.* The scaled nature of the fee in this case distinguishes it from the flat fee at issue in *Thrifty Rental Car System, Inc. v. City and County of Denver*, 833 P.2d 852 (Colo. App. 1992). That case construed Colorado's anti-diversion provision and is discussed more fully below. *See infra* Section IV.B.

185. Customers had standing in these cases, unlike in *Karbal*, because the charge was imposed directly on customers. *Cf.* Karbal v. Ariz. Dep't of Revenue, 158 P.3d 243, 245–46 (Ariz. Ct. App. 2007).

186. *See* Pope v. City of Phoenix, No. 1 CA-TX 20-0006, 2023 WL 3962479 (Ariz. Ct. App. June 13, 2023). The two cases, which were consolidated on appeal, alleged the same facts and legal claims but covered different periods. *Id.*

187. *See id.* at *1, *5.

188. *See id.* at *3–4.

a public road.'"[189] Given that standard, the court ruled that the anti-diversion provision did not cover the car rental facility charge.[190] Plaintiffs did not petition the Arizona Supreme Court for review.

IV. ANALYSIS OF ARIZONA'S ANTI-DIVERSION JURISPRUDENCE

In this Part, I assess the Arizona courts' decision to adopt a narrow, technical reading of the Arizona anti-diversion provision's broad language, focusing primarily on the Arizona Supreme Court's opinion in *Saban* and the Arizona Court of Appeals' decision in *Pope*. I begin by discussing the *Saban* court's interpretive canons, which, I argue, the court disregarded by construing "relating to" to mean only taxes that are "a prerequisite to, or triggered by, the legal operation or use of vehicles" on Arizona streets.[191]

I turn next to the clear statements of purpose found in the provision's legislative history, which reveal that the provision was meant to reflect the benefits theory of taxation and ensure that revenues extracted from road users be dedicated to road uses. The court brushed these statements aside because they arguably do not provide a bright-line rule for the court to apply.[192] While one can understand the court's desire for an easy-to-apply rule, disregarding the provision's clearly stated legislative purpose is inappropriate. At the very least, it contravenes the court's own statements that its interpretive goal is to determine and carry out such purpose.

I next consider the historical practices identified in the 1952 Voter Pamphlet and the court's decision to extract from them a precise and technical meaning that limited the provision's broad language. Given the clear statements of purpose and broad constitutional language used, I argue that one would expect more direct evidence to justify this limitation.

I also consider the court's argument that the car rental surcharge is akin to Arizona's historic TPT—which the anti-diversion provision did not cover—and unlike the Motor Carrier Tax that was covered. While I disagree with the court's conclusion, such a finding provided the court a way to decide the case before it, without crafting a bright-line rule that would apply to other taxes with very different features.

Next, I examine the court's reliance on Ohio's jurisprudence to construe similar language. I argue that this reliance is misplaced because (1) Ohio's legislative history differs from Arizona's, warranting a different result, and

189. *Id.* at *3.
190. *Id.* at *5.
191. *See Saban III*, 434 P.3d 1168, 1178 (Ariz. 2019).
192. *See supra* Section III.B.2.

(2) the Ohio courts explicitly rejected a narrow bright-line rule in favor of a broader case-by-case approach that focused on the nature of the tax, not its form.

Finally, I turn to jurisprudence of other states, which demonstrates that a focus on the benefits theory of taxation *can* serve as a meaningful and workable limiting principle when construing the scope of the term "relating to" in this context.

Turning to *Pope*, I argue that the narrow rule adopted in *Saban* prevented the Arizona Court of Appeals from considering whether the fee at issue in that case targeted road users and instead focused the court on the form of the tax. As the court in *Beaver Excavating* noted, a broad reading of the term "relating to" was necessary to prevent legislatures from circumventing the anti-diversion provision by elevating form over substance.[193] The narrow *Saban* definition opened the door to just such behavior.

A. Saban

1. Interpretive Canons and Textual Analysis

The Arizona Supreme Court began its analysis by setting forth its interpretative standards, cautioning against focusing on fine semantics, grammatical distinctions, legalistic doctrine, and parsing sentences, as well as warning against reading hypertechnical meanings into the language—all of which could lead to results at odds with the framer's objectives.[194] The court further asserted that the drafters carefully chose the words they used.[195] In particular, the court held that "relating to" had to be limited because otherwise the drafters would not have needed to call out fuels separately.[196]

The court's finding that the broad phrase "fees, excises, or license taxes relating to [the registration,] operation, or use of vehicles on the public highways or streets" only encompasses taxes "imposed as a prerequisite to, or triggered by, the legal operation or use of a vehicle"[197] flies in the face of the interpretive canons and admonitions the court set forth in the opinion's legal standard section, as well as the claim that the drafters carefully and intentionally chose their words.[198] As the dissent noted, the court effectively

193. *See Beaver Excavating II*, 983 N.E.2d 1317, 1325–27 (Ohio 2012).
194. *Saban III*, 434 P.3d at 1174.
195. *Id.* at 1176.
196. *Id.*
197. *Id.* at 1178.
198. *See id.* at 1174–76.

rewrote the provision to add specific restrictions not found in the text or the legislative history.[199]

Had the drafters intended to limit the provision to cover only taxes that were "prerequisites to" or "triggered by" "legally" operating or using vehicles on public roads, they could simply have said so, whether by specifically identifying the covered taxes in the constitutional text or by using the formulation the court adopted as the text's meaning. This is not simply a hypothetical point. In addition to the Hayden-Cartwright Act's provision, twenty-one states had adopted anti-diversion provisions by 1952,[200] and the drafters had many examples before them of how to draft a narrow provision.

The starting point of any comparative textual analysis must be the Hayden-Cartwright Act. The majority in *Saban* surprisingly stated that Arizona's anti-diversion provision "was not enacted to comply with the Hayden-Cartwright Amendment and obtain federal funding," noting that Arizona complied before the provision was enacted.[201] This makes little sense. That Arizona already complied does not mean that future compliance was assured. Indeed, as was clearly stated in the 1952 voter pamphlet, a key reason for adopting the provision was to prevent the legislature from diverting road user revenues and putting federal dollars at risk: "WHY JEOPARDIZE FEDERAL AID BY ALLOWING ANY DIVERSION OF ROAD USER TAXES TO OTHER THAN ROAD PURPOSES?"[202] The Hayden-Cartwright Act's broad scope is directly relevant to how broadly the "relating to" language used in the anti-diversion provision should be construed.

The Hayden-Cartwright Act provides that states must use revenues from "[s]tate motor vehicle registration fees, licenses, gasoline taxes, and *other special taxes on motor vehicle owners and operators of all kinds*" for road construction and maintenance.[203] As the dissent in *Saban* noted, this formulation is quite broad and suggests that the Act covers more than just taxes listed in the first part of the formulation.[204] It also reflects the benefits theory of taxation articulated both in the Hayden-Cartwright Act and in the 1952 voter pamphlet—that is, the idea that the revenues from taxes imposed on road users should be spent on the roads.[205] The majority suggested that Arizona voters did not see this language in the voter pamphlet,[206] but the

199. *Id.* at 1178–82 (Bolick, J., concurring in part and dissenting in part).
200. ARIZ. SEC'Y OF STATE, *supra* note 11, at 4.
201. *Saban III*, 434 P.3d at 1178.
202. ARIZ. SEC'Y OF STATE, *supra* note 11, at 5.
203. Hayden-Cartwright Act of 1934, ch. 586, § 12, 48 Stat. 993, 995 (emphasis added).
204. *Saban III*, 434 P.3d at 1179 (Bolick, J. concurring in part and dissenting in part).
205. *See* ARIZ. SEC'Y OF STATE, *supra* note 11, at 3–5; Hayden-Cartwright Act § 12.
206. *See Saban III*, 434 P.3d at 1177–78.

drafters certainly did. The anti-diversion provision's broad language mirrors the broad language found in the Hayden-Cartwright Act and is therefore relevant evidence of intent.[207]

Had the drafters intended to limit the anti-diversion provision's scope to specific taxes or a limited type of tax, they had a number of clear examples of how to do so. Nine of the twenty-one states that adopted anti-diversion provisions before Arizona specifically identified the taxes their provisions would cover.[208] For instance, Idaho's provision, adopted in 1940, expressly identifies fuel taxes and "any tax or fee for the registration of motor vehicles" as the only revenues subject to its provision.[209] Iowa's provision adopted in 1942 specifically lists "motor vehicle registration fees" and "excise taxes on motor vehicle fuel."[210] Washington's provision adopted in 1944 covers "[a]ll fees collected . . . as license fees for motor vehicles and all excise taxes . . . on the sale, distribution or use of motor vehicle fuel."[211]

Pennsylvania's provision, adopted in 1945, includes among its specific taxes covered "all proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operators' license fees and other excise taxes imposed on products used in motor transportation."[212] Texas's provision was also quite narrow when initially adopted in 1946, covering revenues "derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways."[213]

Ample evidence also exists that broad formulations would naturally include a wide range of taxes. For instance, Michigan's provision, adopted in 1938, covers "taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highways of this state, and on all motor vehicles registered in this state."[214] Despite the apparent narrow scope of this language, drafters felt the need to expressly exclude the general sales tax, the franchise or privilege fees charged to manufacturers and dealers on motor vehicles in stock or bond, and a number of other taxes.[215]

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207. *See supra* Section I.A.

208. Those states are Michigan, Idaho, North Dakota, Iowa, Florida, Washington, Pennsylvania, Texas, and Georgia. *See infra* Appendix A.

209. IDAHO CONST. art. VII, § 17.

210. IOWA CONST. art. VII, § 8.

211. WASH. CONST. art II, § 40.

212. PA. CONST. art. VIII, § 11.

213. TEX. CONST. art. VIII, § 7-a.

214. MICH. CONST. art. IX, § 9 (originally art. X, § 22).

215. *See id.*

Excluding these taxes would have been unnecessary had the drafters believed the language they used had a narrow scope.

California's provision, also adopted in 1938, covers "all moneys collected from motor vehicle and other vehicle registration license fees and from any other tax or license fee now or hereafter imposed by the State upon vehicles, motor vehicles or the operation thereof."[216] The drafters must have understood such language to have a broad reach because they expressly excluded certain license fees and taxes imposed under its retail sales tax.[217]

This evidence reveals that the drafters of Arizona's anti-diversion provision had clear and explicit examples of how to draft a rule limited to specific existing taxes or to a limited category of taxes. They were also on notice that a wide range of taxes could be considered "related to" the operation or use of a vehicle. In the face of this evidence, they adopted a provision using the broadest language possible.[218] If we are to take seriously the Arizona Supreme Court's claim that the drafters carefully picked the words they used and its admonition not to overread such language,[219] importing narrow restrictions into the broad constitutional language, especially when paired with the broad language found in the 1952 voter pamphlet,[220] is clearly improper.

A reading more consistent with the court's stated interpretive guideposts is that the broad formulation the drafters used—and the voters approved—was intended to be broad and capture the "special taxes on motor-vehicle operators and users of all kinds" set forth in the Hayden-Cartwright Act. Under this view, the question is not whether the tax is a prerequisite to or triggered by the legal operation or use of vehicles, but rather whether it is a special tax targeted at road users, such that it would be unfair to use those revenues for non-road purposes, consistent with the promise made in the

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216. CAL. CONST. art XXVI, § 2.

217. *Id.* art. XXVI, § 4.

218. There is some dispute whether "with respect to" is as broad as "relating to." *See, e.g.*, Ye v. GlobalTranz Enters., Inc., 74 F.4th 453, 465–66 (7th Cir. 2023) (asserting that "relating to" is broader than "with respect to"), *cert. denied*, 144 S. Ct. 564 (2024); Cal. Tow Truck Ass'n v. City & Cnty. of S.F., 807 F.3d 1008, 1021 (9th Cir. 2015) (equating the two phrases). Arizona courts have not addressed this question. However, there is no dispute that "relating to" has the broadest reach of the possible formulations.

219. *Saban III*, 434 P.3d 1168, 1174 (Ariz. 2019).

220. *See* ARIZ. SEC'Y OF STATE, *supra* note 11, at 3 ("[T]he Better Roads Amendment['s] . . . purpose is to insure the expenditure of all revenues derived from road users to road uses only.").

voter pamphlet that all revenues extracted from road users be used to pay for the roads.[221]

2. Statements of Purpose

Setting aside examples from other states that might shed light on the meaning of Arizona's provision, the Arizona Supreme Court acknowledged that the text of Arizona's provision, standing alone, offered no suggestions as to how the term "relating to" might be limited.[222] Thus, the court looked to its purpose—as revealed in the legislative history and by historical practices—to see whether those sources could provide one.[223] Given the very specific limitations the Arizona Supreme Court read into the admittedly broad language, one should expect strong evidence to support its interpretation. In fact, the evidence does not support such a drastic rewriting of constitutional text.

Although it may seem self-evident, the very best evidence of purpose is found in direct statements regarding the provision's purpose. The Hayden-Cartwright Act, which motivated passage of Arizona's anti-diversion provision, contained a clear statement of purpose: "It is unfair and unjust to tax motor vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways . . . ."[224] This explained its requirement that "special taxes on motor vehicle owners and operators of all kinds" be dedicated to road purposes.[225]

Arizona's 1952 Voter Pamphlet advocating adoption of the anti-diversion provision echoed this purpose. The pamphlet stated broadly that the provision's purpose was to "INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY."[226] The pamphlet further stated that "if not used for road purposes,

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221. *Id.* Arguably, that some states identified only specific taxes in their anti-diversion provisions could suggest that the Hayden-Cartwright Act was similarly limited. However, state anti-diversion provisions need not be coextensive with the Act. By and large, the state provisions that identified specific taxes covered those called out in the Act. The lack of broader catch-all language that might cover future taxes does not render those states out of compliance.

For instance, it seems certain that the Hayden-Cartwright Act would cover a new tax on miles driven imposed on those driving EVs. Such taxes would automatically be covered in states such as Arizona with broadly drafted provisions. States with narrower provisions would need to pass legislation committing revenues from such taxes to road uses to qualify for federal funds.

222. *Saban III*, 434 P.3d at 1174.

223. *Id.* at 1175.

224. Hayden-Cartwright Act of 1934, ch. 586, § 12, 48 Stat. 993, 995.

225. *Id.*

226. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.

these user taxes become unfair because they are not based on benefits received, ability to pay, or the taxpayer's interest."[227] It asked voters: "WHY JEOPARDIZE FEDERAL AID BY ALLOWING ANY DIVERSION OF ROAD USER TAXES TO OTHER THAN ROAD PURPOSES?"[228]

Plaintiffs argued that these clear statements of purpose—advancing the benefits theory of taxation—supported a broad reading of the provision's text and an approach that looked to the target of a given tax to determine its scope.[229] The court rejected this approach and the clear evidence of purpose because these did not provide an easily applicable rule.[230] While the court's desire for a bright-line rule is understandable, it runs counter to the court's own statement that the goal of constitutional interpretation is to effect the voters' intent.[231] To be fair, it is possible that the terms "all revenues derived from road users" and "road user taxes" *could* have narrow technical meanings. However, given the clear statement of purpose and the broad language used in the provision itself, evidence that these terms have such a meaning should be very strong. As demonstrated below, the evidence from which the court extracted its narrow definition does not rise to this level.

3. The Taxes Dedicated to the Highway Fund in 1952

Rather than look to the clear statements of purpose found in the voter pamphlet, the Arizona Supreme Court attempted to infer the meaning of the term "relating to" from the nature of the taxes covered when the provision was enacted. The pamphlet promises that no changes would be made to the use of existing taxes and then identified the taxes, the revenues of which were dedicated to road uses, including "state gasoline and diesel taxes, registration fees, unladen weight fees on common and contract motor carriers, and motor carrier taxes based on gross receipts."[232] The court extracted its limiting principle from these examples, effectively rewriting the constitution's broad language.[233]

The difficulty with this approach is that the pamphlet did not promise that the revenues from *only* these taxes or these kinds of taxes would be dedicated to road uses. Had the drafters intended to limit the provision to such taxes,

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227. *Id*. at 4.
228. *Id.* at 5.
229. *See Saban III*, 434 P.3d 1168, 1175–76 (Ariz. 2019).
230. *Id.* at 1177.
231. *Id.* at 1174.
232. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.
233. *See Saban III*, 434 P.3d at 1176.

they could simply have said so. They certainly had examples from other states doing just that.[234] Instead, the pamphlet explicitly referred to all revenues from road users,[235] while the provision's text employed broad language suggesting that more than the taxes listed in the pamphlet might be covered.[236]

Extracting a narrow, technical meaning for the anti-diversion provision's broad language from the specific taxes enumerated in the voter pamphlet contravenes both the interpretive guidelines the court endorsed[237] and its contention that the drafters carefully chose the words they used.[238]

4. The Historic TPT and the Motor Carrier Tax

Another justification for the decision in *Saban*—and one that did not require the court to narrowly construe the anti-diversion provision—is that the tax at issue in *Saban* was a TPT, as opposed to a tax on road users, and the provision did not cover revenues from TPTs. When Arizona adopted its anti-diversion provision, it had a TPT that applied to car rental companies, along with a long list of other kinds of businesses, and the proceeds of that tax were not dedicated to road uses.[239] It also had a motor carrier tax that was covered.[240] The court could simply have held that the car rental surcharge was analogous to the historic TPT and therefore not covered.

This is not to suggest that this approach is necessarily correct. As a preliminary matter, if the goal is to ensure that revenues extracted from road users be spent on the roads, the form of the tax should not matter. And, indeed, the voter pamphlet indicated that the provision would cover "all revenues derived from road users."[241] Nothing in the pamphlet suggests that the tax must be imposed directly on road users. Indeed, as the Ohio Supreme Court explained in *Beaver Excavating*, the broad language was specifically designed to prevent legislatures from evading the limitation by manipulating

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234. *See supra* Section IV.A.1.

235. *See* ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.

236. *See* ARIZ. CONST. art. IX, § 14. Notably, the language identifying the current taxes whose revenue would be dedicated to road uses does not use any limiting terms such as "all," "only," or "exclusively." *See id.*

237. *See Saban III*, 434 P.3d at 1174.

238. *d*. at 1176.

239. *See* ARIZ. CODE ANN. § 73-1303 (1939); *see also Saban II*, 418 P.3d 1066, 1072 (Ariz. Ct. App. 2018).

240. *Saban II*, 418 P.3d at 1072.

241. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.

the form of the tax.[242] Rather, the question should be whether the tax extracts revenues from road users, as such.

Moreover, the Arizona Supreme Court's conclusion that the car rental surcharge was like the historic TPT overlooks key differences between the two taxes. The historic TPT was a general tax on virtually every type of business in Arizona. While it applied to car rental companies, they were only one type of business in a broad category. In contrast, the legislative history makes clear that the car rental surcharge was a special tax intentionally targeting road users. Both the Plan B committee and publicity pamphlet supporting the surcharge made clear that those who rented cars—mostly people from out of state—would end up paying the tax and footing the bill for Cardinals Stadium, among other sporting expenditures.[243] Moreover, the longer they rented a car, the more tax they would pay.[244] Thus, the amount of the tax was scaled to the time drivers used the car on Arizona roads.

The Arizona Supreme Court attempted to avoid this conclusion by noting that voters also imposed a tax on hotel customers.[245] However, taxing hotel users to fund Cardinals Stadium and other non-road projects does not take away from the fact that drafters and voters targeted road users with the car rental surcharge. In contrast, the historic TPT was imposed on a broad range of businesses and not targeted at road users. Allowing the legislature to circumvent the anti-diversion provision by simply including another class of taxpayers along with road users would undermine the provision's broad language, which was intended to prevent the legislature from elevating form over substance.

The Arizona Supreme Court also stated that none of the taxes the pamphlet identified as covered by the anti-diversion provision "are imposed on businesses, like car rental agencies, that merely benefit from the existence of roads."[246] This is not correct. The motor carrier tax was imposed on the gross revenues of businesses that benefitted from the existence of roads.[247] Indeed, the Arizona Supreme Court itself has held that the motor carrier tax was imposed on companies that "look[ed] directly to the inordinate use of public

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242. *Beaver Excavating II*, 983 N.E.2d 1317, 1325–26 (Ohio 2012).

243. *See* GOVERNOR'S STADIUM PLAN "B" ADVISORY TASK FORCE, *supra* note 16 ("[T]he capital plan should not include any general taxes on the Arizona public. Any new taxes that are required should be paid primarily by nonresident visitors to the state."); Publicity Pamphlet, *supra* note 114 (noting that "the surcharge on car rentals targets visitors to the State" and "[t]he tax burden will fall primarily on visitors to the County").

244. ARIZ. REV. STAT. ANN. § 5-839 (2024).

245. *Saban III*, 434 P.3d 1168, 1177 (Ariz. 2019).

246. *Id.*

247. Campbell v. Commonwealth Plan, Inc., 422 P.2d 118, 121 (Ariz. 1966).

highways to realize pecuniary benefits."[248] It is hard to see how car rental companies rely on the roads any less than motor carriers. While it was structured as a TPT, the car rental surcharge's narrow focus on out-of-state drivers makes it more like the motor carrier tax than the broad TPT.

5. Ohio's Anti-Diversion Provision and Case Law Construing It

Although the Arizona Supreme Court's decision in *Saban* did not mention Ohio's anti-diversion provision or the cases construing it, the appeals court's decision did. Indeed, on the surface the Arizona Court of Appeals appears to have followed the Ohio Supreme Court's interpretive approach and analysis, going so far as to adopt the "triggered by" language that court used.[249] Given that the Arizona Supreme Court followed the lower court's reasoning in coming to the same conclusion, it is important to examine both the Ohio court's analysis and how the Arizona Court of Appeals used it when construing Arizona's anti-diversion provision, especially given the similar "relating to" language.

Such a review reveals critical differences in the legislative histories of the two provisions. If the goal of constitutional interpretation is to determine the drafters' or electorate's intent, differences in the legislative history should matter, and identical language can and should be construed differently where the legislative histories so indicate.

Even absent these critical differences that warrant a broader reading of Arizona's provision than Ohio's, the Arizona courts overread what the Ohio court had done. While the Ohio Supreme Court observed that the taxes covered by its anti-diversion provision were "triggered by" operating or using a vehicle, it expressly did *not* adopt a hard-and-fast rule stating that *only* taxes triggered by operating or using a vehicle are covered. Instead, it committed to a case-by-case analysis of whether a given tax was more "related to" the operation or use of vehicles than to some other activity, looking past the form the tax took to its underlying function.[250]

The Ohio court further made clear that the term "relating to" must be read broadly to prevent the legislature from circumventing the provision's requirement that revenues extracted from road users be spent on the roads.[251] The car rental surcharge, which was explicitly targeted at road users,[252] even

248. *Id.*
249. Ohio Trucking Ass'n v. Charles, 983 N.E.2d 1262, 1267 (Ohio 2012).
250. *Id.*
251. *Beaver Excavating II*, 983 N.E.2d 1317, 1325–26 (Ohio 2012).
252. *See* sources cited *supra* note 114.

though nominally imposed on rental car companies, would likely qualify under the standard set forth in Ohio's jurisprudence.

Ohio's pamphlet specifically noted "automobile license and gas tax money" as being covered by the proposed constitutional amendment.[253] Ohio's pamphlet is worth quoting at length to show how different the two pamphlets were. For instance, the first line of the pamphlet states that it is a "PROPOSAL TO PROHIBIT THE EXPENDITURES FROM CERTAIN TAXES RELATING TO VEHICLES FOR OTHER THAN HIGHWAY AND RELATED PURPOSES."[254] Thus, from the start, the pamphlet focused the voter on specific taxes, not a class of taxes. This narrow focus was evident in the pamphlet's arguments section, which identified only automobile license and gas tax money as being affected by the amendment.[255]

The Ohio Constitutional Revision Committee Report from 1972 similarly identifies only "all of the revenues derived from the registration of motor vehicles and from the taxes imposed on the purchase of fuels for motor vehicles."[256] Given the focus on specific taxes, and the lack of any broad language about what was covered, looking to the character of the covered taxes when deciding the scope of the broad language found in Ohio's provision might make sense.

In contrast, while Arizona's pamphlet states that no changes will be made to the way *current* taxes are spent, the pamphlet's tenor and tone differ significantly from Ohio's. In particular, it explicitly states that the provision's purpose was to "INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY."[257] The pamphlet further centers the benefits theory of taxation: "if not used for road purposes, these user taxes become unfair because they are not based on benefits received, ability to pay, or the taxpayer's interest."[258] Extracting characteristics of the covered taxes and treating them as a limitation on broad constitutional language makes far less sense in Arizona than it might have in Ohio.

However, even with Ohio's legislative history suggesting a narrower reading of its constitutional language than Arizona's, the Ohio Supreme Court did not adopt a narrow interpretation that required all covered taxes to be a prerequisite to or triggered by legal operation of vehicles on state roads.

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253. OHIO SEC'Y OF STATE, *supra* note 44.
254. *Id.*
255. *Id.*; *see supra* text accompanying note 57.
256. 1972 OHIO REPORT, *supra* note 62, at 1755.
257. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3.
258. *Id.*

Unlike Arizona's courts, the Ohio Supreme Court in *Ohio Trucking* intentionally refrained from adopting such a rule, leaving open the possibility that the provision was broader than the examples cited in the legislative history, consistent with the provision's broad language.[259]

Indeed, the day after deciding *Ohio Trucking*, the Ohio Supreme Court decided *Beaver Excavating Co. v. Testa*, which involved the imposition of a commercial-activity tax applied to the gross receipts from motor-vehicle sales.[260] The Ohio Supreme Court adopted a broad reading of the term "relating to," noting that it was "intended to be interpreted broadly."[261] The court further stated that "[t]he evident purpose here was to ensure that these objects of fees and taxation would not be narrowed or diminished through any legislative efforts to statutorily redefine the terms as an attempted end-run to the amendment."[262]

When one considers Ohio's voter pamphlet as well as the court's refusal to adopt a hard-and-fast rule limiting its reach, the *Saban* court's decision to restrict the reach of Arizona's provision to cover *only* taxes that were a "prerequisite to" or "triggered by" "legally" using a vehicle on the streets makes little sense. The *Saban* court's interpretation effectively changes the meaning of the key promise found in the Arizona pamphlet, that all revenues extracted from road users would be spent on the roads.[263] And rather than ask whether the tax is imposed on road users, such that the revenues should be spent on the roads, as the benefits theory of taxation requires, one must simply ask whether the tax is a prerequisite to or triggered by the legal operation or use of a vehicle on Arizona roads.

6. Case Law from Other Jurisdictions

As previously noted, thirty-five states currently have anti-diversion provisions, some of which use the same "relating to" language found in Arizona's provision or similar "with respect to" language.[264] The Arizona Supreme Court did not cite these provisions or the case law construing them in *Saban*. Nonetheless, such jurisprudence sheds light on how best to approach the broad language found in Arizona's provision. In particular, these cases reveal a broad understanding of the term "relating to" and an

259. Ohio Trucking Ass'n v. Charles, 983 N.E.2d 1262, 1267 (Ohio 2012).
260. 983 N.E.2d 1317 (Ohio 2012).
261. *Id.* at 1325.
262. *Id.* at 1326.
263. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3–4.
264. *See infra* Appendix A.

approach that centers the benefits theory of taxation and the goal to ensure that revenues extracted from road users be spent on the roads.

For instance, Maine added article IX, section 19 to its constitution in 1944, providing that "[a]ll revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for propulsion of such vehicles" be devoted to road uses.[265] In 1959, Maine's senate asked the state supreme court to advise whether the state's anti-diversion provision would cover proposed legislation setting a $15 "premium" for uninsured drivers to be paid at registration.[266] The court responded that, even though the proposed statute designated the charge a "premium" and specified that the premium did not constitute payment of any other fee, excise, or license tax, the charge was prerequisite to registering a vehicle.[267] Thus, the court held that, however designated, the premium fell within the spirit of the law, if not the exact letter thereof, and was therefore covered.[268]

This case is notable for a number of reasons. First, it makes clear that the name of the charge does not control whether the anti-diversion provision covers it and nor does a declaration that it is distinct from other charges that clearly are covered. This approach is consistent with the Ohio Supreme Court's statement in *Beaver Excavating* that the form of a tax does not control whether it is covered by the state's anti-diversion provision.[269] Second, even though the court found the "premium" to be a prerequisite to registering a car, it did not hold that the anti-diversion provision covered *only* charges that were a prerequisite to registering, operating, or using an automobile.[270] Finally, this charge was not assessed to all drivers, undercutting the notion that the only taxes "relating to" the registration, operation, or use of a vehicle are those charged to all drivers.

Maine's Supreme Judicial Court considered the scope of its anti-diversion provision again in *Portland Pipe Line Corp. v. Environmental Improvement*

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265. ME. CONST. art IX, § 19.

266. *In re* Opinion of the Justices, 152 A.2d 494, 496–97 (Me. 1959).

267. *Id.* at 501.

268. *Id.*

269. *Beaver Excavating II*, 983 N.E.2d 1317, 1324 (Ohio 2012).

270. *In re* Opinion of the Justices, 152 A.2d at 501. The same "prerequisite" label could also have been applied to the reinstatement fee at issue in *Fowler v. Ohio Department of Public Safety*, 95 N.E.3d 766 (Ohio Ct. App. 2017). Drivers who lacked insurance were required to pay an additional fee, though not formally as part of the registration or license process, and they could not drive without paying the fee. *Id.* at 772. In both cases, the payment was required because of the lack of insurance. *Id.*; *In re* Opinion of the Justices, 152 A.2d at 501. Nonetheless, the court in *Fowler* determined that such payments were not related to the registration, operation, or use of vehicles. 95 N.E.3d at 771.

Commission, when it was asked to determine whether article IX, section 19 covered fees collected from those who transported petroleum products for export.[271] The court determined that the anti-diversion provision did not cover the fees in question, relying heavily on the provision's purpose—that is, the benefits theory of taxation.[272] The court began by examining the gasoline tax, which the anti-diversion provision admittedly covered, noting that "[t]he plan of the 'gasoline tax' was to focus on those who derived benefits as users of the highway system as the class subject to the tax. . . . It is apparent to this court that the gasoline tax statutes are intended to result in taxation of highway users."[273] It did not matter to the court that the tax was nominally imposed on distributors, as the tax was ultimately passed on to drivers.[274]

In contrast to the gasoline tax, the fee in question in *Portland Pipe Line* was imposed on those engaged in transferring petroleum overseas; that is, it was not ultimately borne by Maine's road users.[275] Thus, the court held that the fees fell outside the state's anti-diversion provision.[276] Yet despite this holding, the court's reasoning affirms the centrality of the benefits theory in determining the anti-diversion provision's scope. Taxes intended to be—and actually borne by—those who use the roads are covered, even if those taxes are nominally imposed on others.

Judge Dorrian fully endorsed *Portland Pipe Line*'s reasoning in his concurrence in the Ohio Court of Appeals decision in *Beaver Excavating*, noting that Ohio's anti-diversion provision "was intended to restrict the use of revenues from taxes and fees *targeted at* users of public roads, irrespective of whether they were classified as general or specific taxes."[277] Judge Dorrian concluded that the Commercial Activity Tax at issue in that case was not targeted at road users and therefore was not covered.[278] The Ohio Supreme Court reversed, using a textual approach that largely ignored the benefits theory.[279] Instead, it determined that the term "relating to" should be read

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271. 307 A.2d 1, 12–14 (Me. 1973).

272. *Id.* at 47–48.

273. *Id.* at 13 (footnote omitted).

274. *Id.*

275. *Id.* at 9.

276. *Id.* at 14.

277. *Beaver Excavating I*, No. 10AP-581, 2011 WL 3074417, at *9 (Ohio Ct. App. July 26, 2011) (Dorrian, J., concurring), *rev'd sub nom. Beaver Excavating II*, 983 N.E.2d 1317 (Ohio 2012).

278. *Id.* at *13.

279. *See Beaver Excavating II*, 983 N.E.2d at 1317.

broadly and thus encompassed a business privilege tax imposed on fuel sellers.[280]

When the Arizona Court of Appeals looked to the Ohio Supreme Court's decision in *Beaver Excavating*, it missed the Maine Court's discussion of the role the benefits theory should play in construing the provision, as well as the Ohio Court of Appeals' endorsement of that approach.[281] Yet, the benefits approach that the Maine court adopted for determining when a tax was related to the use or operation of a vehicle provides a clearer standard than the more amorphous approach the Ohio courts adopted.

Under Maine's benefits approach, the question centers on whom the tax targets. If the tax targets road users, the revenues from that tax must be spent on the roads to ensure tax fairness. In the case of the car rental surcharge, both the Governor's Stadium Plan "B" Advisory Task Force Final Report and voter publicity pamphlet made clear that the tax targeted out of state drivers visiting Arizona.[282] Focusing on who was targeted helps avoid the largely standardless assessment of whether a given tax is more related to driving or to something else, like the failure to obtain insurance. It also looks past the form of the tax, which can confuse the issue.

Case law from New Hampshire is also instructive. New Hampshire's anti-diversion provision mirrors the language found in the Hayden-Cartwright Act, covering revenues "from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels."[283] In a case focused on whether the provision permitted certain expenditures, the New Hampshire Supreme Court explained the rationale for the state's provision, grounding it firmly in the benefits theory of taxation. As the court explained, the provision

> was adopted to assure that assessments on motor vehicles are used to benefit those who incur the assessment, by restricting application of the funds to highway purposes. The reasoning supporting this policy is that the motoring public pays a tax in addition to the general taxes paid in common with other residents of the state.[284]

The New Hampshire Supreme Court has further determined that its provision covers parking meter fees.[285] In the court's words, such fees are

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280. *Id.* at 1325.
281. *See Saban II*, 418 P.3d 1066, 1073 (Ariz. Ct. App. 2018).
282. *See* sources cited *supra* notes 16, 114.
283. N.H. CONST. pt. II, art. 6-a.
284. Opinion of the Justices, 377 A.2d 137, 138 (N.H. 1977) (citations omitted).
285. Opinion of the Justices, 51 A.2d 836, 838–39 (N.H. 1947).

"clearly within the general purpose of [part II, article 6-A of New Hampshire's constitution], which is to restrict money derived from the regulation of motor vehicles to highway purposes."[286] Notably, such fees are not charged to all motorists or triggered by operating or using a vehicle. Rather, they apply only to those who engage in certain activities related to operating or using a vehicle.[287]

In another case that hinged on the provision's limitation to "operation" of a vehicle (as opposed to ownership or use), the court held that the anti-diversion provision did not cover a motor vehicle certificate of title fees.[288] The state required virtually all motor vehicles registered in the state to have a certificate of title as a means of preventing fraud.[289] The court determined that such fees were incurred as a function of car ownership and the transfer thereof, and not operation, as specifically called out in the provision.[290] The court contrasted title fees with registration fees, which motorists must pay to operate a vehicle in the state.[291] The court also opined in passing that the provision did not cover fines from traffic law violations, without offering any reasoning for its conclusion.[292]

West Virginia's anti-diversion provision applies to "[r]evenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels."[293] In *Contractors Ass'n of West Virginia v. West Virginia Department of Public Safety, Division of Public Safety*,[294] the West Virginia Supreme Court considered whether the state's anti-diversion covered six different charges, including inspection sticker fees, registration fees, motorcycle licensing fees, fees from salvage and reconstructed inspections, and license service certification fees.[295] Plaintiffs conceded that the provision covered all but the last two fees, leaving the court to determine the status of those fees.[296]

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286. *Id.* at 839.

287. Opinion of the Justices, 254 A.2d 273, 276 (N.H. 1969). The court also found that the provision covered municipal level permit fees imposed on car owners. *Id.*

288. Am. Auto. Ass'n v. State, 618 A.2d 844, 849 (N.H. 1992).

289. *Id.* at 845 (citing N.H. REV. STAT. ANN. § 261:2, :8 (2024)).

290. *Id.* at 846.

291. *Id.*

292. Opinion of the Justices, 371 A.2d 1189, 1191 (N.H. 1977).

293. W. VA. CONST. art. VI, § 52.

294. 434 S.E.2d 357 (W. Va. 1993).

295. *Id.* at 360.

296. *Id.* at 362.

With regard to the business license fee, the state argued that the fee was a business license tax and therefore not covered by the state's anti-diversion provision.[297] The West Virginia Supreme Court disagreed, finding that it was "related to motor vehicles" and therefore covered.[298] Again, the state argued that the fee was a payment for a service and therefore outside the anti-diversion provision's scope.[299] The court again disagreed, indicating that it was "derived from a motor vehicle."[300]

This case highlights one of the difficulties courts must struggle with when determining the nature of a given charge. It is tempting to consider both the charge's form and the uses of the revenue when trying to classify a challenged fee. For instance, if the legislature calls the payment an abstract fee or facility charge and designates payments to be spent for those purposes, the payment is arguably more related to the service provided than to motor vehicles. However, this turns the analysis on its head. One must determine the nature of the charge first and then determine whether the spending is appropriate. If we allow legislators to affect the analysis by specifying the spending, they can readily avoid the prohibition.

As these cases reveal, an approach grounded in the benefits theory of taxation can work. Both Maine's and New Hampshire's courts were clearly capable of assessing challenged taxes on a case-by-case basis and distinguishing between covered taxes and those that fell outside the anti-diversion provision by looking at who was targeted without rewriting or otherwise narrowing their provisions to simplify the analysis.

* * *

The Arizona Supreme Court could have resolved *Saban* simply by determining that the car rental surcharge was more like the historic TPT than the motor carrier tax. Alternatively, it could have decided that the tax was more related to the business of renting cars than to the use or operation of vehicles, following the Ohio Supreme Court's approach. Instead, rejecting the benefits theory of taxation as a way to distinguish between charges, the court adopted a narrow and technical definition that forecloses consideration of whether the tax is targeted at road users or whether fairness requires the proceeds to be spent on the roads.[301] This approach elevates form over substance and takes the benefits theory of taxation—the animating purpose

297. *Id.*
298. *Id.*
299. *Id.*
300. *Id.*
301. *See supra* Part III.

underlying the provision—out of the picture entirely. This ultimately distorts the analysis, as can be readily seen in the context of *Pope*.

B. Pope

Unlike the tax in *Saban*, which was imposed as a TPT on companies that rented cars, the tax in *Pope* was imposed directly on customers who rented cars.[302] Thus, there was no concern that this tax was like the historic TPT that was excluded from the provision's reach. Rather, the proponents of the tax have characterized it as a fee on those who use the car rental facility, and not related to the operation or use of vehicles.[303] Plaintiffs argued that the way the fee is calculated suggests that it was in fact targeted at road users.[304] As with the tax at issue in *Saban*, the fee in *Pope* was based on the number of days the person has rented the car, thus increasing with the quality of the car rented and the length of the rental.[305] If the rental facility fee were truly aimed at facility use, the fee would be based on facility use. All renters would use it at least once when they rent a car. Some would even use it twice when they return the car. This suggests a flat fee or, at most, two different fees, depending on whether the car is returned to the airport.

The court in *Pope* gave this argument short shrift, stating that the scaled fee "plausibly relates to the volume of a car rental company's business at the facility: how many vehicles the company needs there and thus how much space at the facility it needs to use."[306] However, that makes no sense. First, the fee is levied on customers, not car rental companies. Second, there is little correlation between how much the customer pays the rental car company and the number of vehicles a company needs at the facility.

The court also noted that the fee was charged whether the customer drove the car or left it parked, suggesting that it does not necessarily correspond to actual road use.[307] However, the same can be said for license and registration fees. Taxpayers pay the same amount, regardless of whether they drive their cars or leave them parked. Nonetheless, they are considered road user fees. Similarly, fuel taxes do not necessarily correspond closely to road use.

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302. *See* ARIZ. REV. STAT. ANN. §§ 28-2153 to -2157 (2024); PHX. CITY CODE § 4-79(A) (2024).

303. *See, e.g.*, Pope v. City of Phx., No. 20-0006, 2023 WL 3962479, at *3 (Ariz. Ct. App. June 13, 2023).

304. *Id.* ("[Plaintiffs] argue the [tax] is a fee on road users . . . .").

305. *See* PHX. CITY CODE § 4-79(A) (2024).

306. *Pope*, 2023 WL 3962479, at *4.

307. *See id.*

Hybrids get far more miles per gallon than trucks, such that truck owners pay more for driving less. Taxes on road users need not correspond precisely to road use.

A comparison with the facts and holding of *Thrifty Rent-A-Car System, Inc. v. City and County of Denver* is instructive.[308] In *Thrifty*, the Colorado Court of Appeals had to determine whether Colorado's version of the anti-diversion provision—which applies to "any license, registration fee, or other charge with respect to the operation of any motor vehicle upon any public highway"[309]—covered a flat $6 fee for each customer Thrifty served from the airport. Unlike the fee considered in *Pope*, this fee was charged to the rental car company and actually correlated to facility use.[310] These key differences in the nature of the challenged fee supported a finding that this fee was a charge with respect to the airport, and not with the operation of a vehicle. The facts in *Pope* do not support a similar conclusion.

The court in *Pope* further speculated that it was not clear that the customers were really responsible for the taxes, noting that the rental companies must remit them.[311] In *Karbal* and *Saban*, the court refused to look past the form of the tax, a transaction privilege tax, even though it was passed along to customers.[312] It seems incongruous, at best, to suggest here that we should ignore the clear language of the statute, which imposes the tax directly on customers, because the companies would be punished if they did not remit the tax. Doing so seems like a "heads I win, tails you lose" situation.

The government imposed the tax on drivers. It should not be allowed to disavow that choice and argue that the tax was really targeted at someone else. Looking past the form of a tax is a tool to prevent the legislature from avoiding the anti-diversion provision by playing with the form of a tax. The Arizona Court of Appeals' suggestion in *Pope* turns that on its head, allowing it to be used as a tool for the government to escape the consequences of what it has actually done.

Despite these observations, at the end of the day, the *Pope* court relied on the *Saban* court's ruling that the provision only applied to taxes that were a "prerequisite to" or "triggered by" the legal use of cars on the roads.[313] This standard deprived the court of the ability to evaluate the tax and determine

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308. 833 P.2d 852 (Colo. App. 1992).

309. COLO. CONST. art X, § 18.

310. *Thrifty*, 833 P.2d at 853–54.

311. *Pope*, 2023 WL 3962479, at *4.

312. *See* Karbal v. Ariz. Dep't of Revenue, 158 P.3d 243 (Ariz. Ct. App. 2007); *Saban III*, 434 P.3d 1168 (Ariz. 2019).

313. *Pope*, 2023 WL 3962479, at *5.

whether it was targeted at and extracted revenues from road users, such that the revenues should be spent on the roads. In other words, it took the provision's purpose—to protect road users from having their taxes spent on non-road purposes—out of the analysis entirely, yielding a result contrary to that purpose.

V. CONCLUSION

In 1952, to secure federal funding and prevent the legislature from diverting road-user revenues to non-road uses, Arizona voters adopted a broad constitutional provision requiring that revenues from "fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets" be used on the roads.[314] Both the statute making federal funding available and the voter pamphlet encouraging voters to adopt the provision articulated a benefits theory of taxation, stating that fairness required that road users benefit from the taxes they paid.[315]

Despite the broad language in the Arizona constitution, and after warning against hypertechnical readings that might thwart the voters' intent, the Arizona Supreme Court narrowly construed the provision in *Saban* to limit it to taxes that were "a prerequisite to, or triggered by, the legal operation or use of a vehicle" on Arizona roads.[316] Under this reading, the supreme court held that a car rental surcharge imposed as a transaction privilege tax on car rental companies—but passed along to customers—fell outside the provision, such that the proceeds could be used to fund Cardinals Stadium and other sports-related expenditures.[317] Applying the same standard, the court of appeals in *Pope* held that a car rental facility fee imposed directly on customers—the proceeds of which were used to build a car rental facility and sky train at Phoenix's Sky Harbor Airport—also fell outside the provision's reach.[318]

In reaching its decision in *Saban*, the Arizona Supreme Court looked to the plain text, which it found unhelpful, and the purpose, as revealed by the legislative history and historical practice.[319] Although the court did not refer

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314. ARIZ. CONST. art IX, §14.

315. *See* Hayden-Cartwright Act of 1934, ch. 586, § 12, 48 Stat. 993, 995; ARIZ. SEC'Y OF STATE, *supra* note 11, at 4–6.

316. *Saban III*, 434 P.3d 1168, 1178 (Ariz. 2019).

317. *Id.*

318. Pope v. City of Phx., No. 20-0006, 2023 WL 3962479, at *3 (Ariz. Ct. App. June 13, 2023).

319. *See supra* Section III.A.

to Ohio's anti-diversion provision, which used language identical to Arizona's, nor to Ohio's jurisprudence construing its provision, the Arizona Court of Appeals did; and the limiting language adopted by the Arizona Supreme Court came, in part, from those Ohio cases.[320] However, what started as an observation by the Ohio Supreme Court turned into a rigid rule in the hands of the Arizona Supreme Court, significantly narrowing the scope of Arizona's anti-diversion provision.

Despite the similar language in their respective anti-diversion provisions, the legislative histories in Ohio and Arizona differ significantly, warranting different results. In particular, Ohio's voter pamphlet clearly identified the taxes to which its provision would apply.[321] In contrast, Arizona's voter pamphlet used broad language that centered the benefits theory of taxation and promised that all revenues extracted from road users would be used on the roads.[322] To the extent that Arizona's pamphlet identified specific taxes, it did so for illustrative purposes, not as a means to limit the provision's reach.

Moreover, the Arizona Court of Appeals and Supreme Court overread what Ohio's courts had done. The Ohio Supreme Court noted that the taxes discussed in the voter pamphlet were triggered by driving, but it refrained from construing the broad constitutional language to cover *only* such taxes.[323] Instead, it held that taxes should be evaluated on a case-by-case basis to determine whether they were "related to" use or operation of a vehicle and to ensure that the legislature could not avoid the provision through careful drafting.[324] As such, the court retained discretion to construe the provision broadly to protect the provision's underlying purpose.

In contrast, the Arizona Supreme Court effectively rewrote the broad constitutional language by turning the Ohio Court's observation about the nature of covered tax into a narrow, hypertechnical rule, despite its own warning against doing so. While this approach yields a clear rule that simplifies analysis, it severs the provision from its underlying purpose—to ensure that funds extracted from road users only be used on the roads.

The jurisprudence from other states with similar provisions makes clear that such a case-by-case analysis that centers the benefits theory is possible. Cases from Maine, New Hampshire, West Virginia, and Colorado all considered the nature of the tax, whom it targeted, and what it was most related to.

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320. *See Saban II*, 418 P.3d 1066, 1073 (Ariz. Ct. App. 2018).
321. *See* OHIO SEC'Y OF STATE, *supra* note 44; *see also supra* Section II.A.
322. ARIZ. SEC'Y OF STATE, *supra* note 11, at 3–4.
323. *See* Ohio Trucking Ass'n v. Charles, 983 N.E.2d 1262, 1267 (Ohio 2012).
324. *Id.*

This is not to say that the results in *Saban* and *Pope* are necessarily wrong, though I believe they are. In *Saban*, one could conclude that the tax in question was more analogous to the historic TPT than to the Motor Carrier Tax and therefore is not covered by the anti-diversion provision. Such a tax is arguably not a tax on road users, even if it was intended to be—and actually was—paid by them. That argument is harder to make for the tax at issue in *Pope*, which was imposed directly on road users. Nonetheless, even in *Pope*, one could argue that the tax is more related to the use of the rental facility than to driving, though the way the tax due is calculated belies that claim.

The point is—given the provision's legislative history and broad language—the inquiry should be whether a given tax is related to road use, that is, directed at road users *qua* road users, such that using those funds for purposes other than the roads would be unfair. Such an analysis keeps the provision's purpose front and center when construing the broad language. In contrast, under the *Saban* court's approach, one must simply ask whether the tax is a prerequisite to or triggered by legally driving cars on Arizona roads. This admittedly easier inquiry does not require any consideration of the promise made to Arizona's voters—that the revenues raised from road users be used for road purposes. Moreover, it opens the door for the legislature to avoid the provision and thwart its purpose by disguising taxes on road users to escape the provision's reach. This is precisely what the broad language was designed to thwart.

The *Saban* court correctly noted that the benefits theory of taxation does not provide a clear-cut and easy-to-apply rule when deciding which taxes are covered by Arizona's broad anti-diversion provision. However, that does not mean that the court should set it aside in pursuit of a narrow and easily applied rule. If the provision's purpose is to have a role in helping construe its inherent ambiguity—as the *Saban* court stated it should—and if implementing the benefits theory of taxation was a key reason for adopting the provision—as the legislative history makes clear—then adopting a narrow and rigid interpretation for such broad and flexible language, which effectively eliminated the benefits theory as a factor to be considered in construing the provision, was clearly improper. Rather, the Court should have adopted a case-by-case approach that centered the benefits theory of taxation.

APPENDIX A: STATES WITH ANTI-DIVERSION PROVISIONS[†]

Year	State	Type	Current Citation
1920	Minnesota	taxes imposed on motor vehicles	MINN. CONST. art. XIV, §§ 5, 9, 10
1935	Colorado	"with respect to"	COLO. CONST. art. X, § 18
1938	California	Specific taxes	CAL. CONST. art. XIX, §§1–3
1938	Michigan	Specific taxes on all motor vehicles	MICH. CONST. art. IX, § 9
1938	New Hampshire	"special charges or taxes with respect to"	N.H. CONST. pt. II, art. 6-a
1940	Idaho	Specific taxes	IDAHO CONST. art. VII, § 17
1940	Nevada	"with respect to"	NEV. CONST. art. IX, § 5
1940	North Dakota	Specific taxes	N.D. CONST. art. X, § 11
1940	South Dakota	"with respect to"	S.D. CONST. art. XI, § 8
1942	Iowa	Specific taxes	IOWA CONST. art VII, § 8
1942	Florida	Specific taxes	FLA. CONST. art. XII, § 9(c)
1942	Oregon	"levied on"	OR. CONST. art. IX, § 3a
1942	West Virginia	"derived from motor vehicles"	W. VA. CONST. art. VI, § 52
1944	Maine	"relating to"	ME. CONST. art. IX, §19
1944	Washington	Specific taxes	WASH. CONST. art. II, § 40
1945	Kentucky	"relating to"	KY. CONST. § 230
1945	Pennsylvania	Specific taxes	PA. CONST. art. VIII, § 11
1946	Texas	Specific taxes	TEX. CONST. art. VIII, §§ 7-a to -c

† The table in Appendix A was compiled using research conducted by Tara Mospan with the Ross-Blakley Law Library at ASU's Sandra Day O'Connor College of Law. A spreadsheet detailing the history of each provision is available on file with the author.

1947	Ohio	"relating to"	OHIO CONST. art. XII, § 5a
1948	Massachusetts	"relating to"	MASS. CONST. amend. CIV
1951	Georgia	Specific taxes	GA. CONST. art. 3, § 9, para. VI
1952	Arizona	"relating to"	ARIZ. CONST. art. IX, § 14
1952	Alabama	"relating to"	ALA. CONST. art. IV, § 111.06
1954	Wyoming	"relating to"	WYO. CONST. art. XV, § 16
1956	Montana	Specific taxes	MONT. CONST. art. VIII, § 6
1962	Missouri	"Right to use"	MO. CONST. art. IV, § 30(b)
1962	Utah	"related to"	UTAH CONST. art. XIII, § 5
1984	New Jersey	Specific taxes	N.J. CONST. art. VIII, § 2, para. 4
1990	Louisiana	Specific taxes	LA. CONST. art. VII, pt. IV, § 27
2013	Arkansas	Specific taxes	ARK. CONST. amend. 91, § 20
2014	Maryland	Unspecified‡	MD. CONST. art. III, § 53
2014	Wisconsin	Specific taxes	WIS. CONST. art. VIII, § 11
2015	Delaware	Specific taxes	DEL. CONST. art. 8, § 12
2016	Illinois	"relating to"	ILL. CONST. art. IX, § 11
2018	Connecticut	Unspecified	CONN. CONST. art. 3, § 19

‡ While the Maryland constitution is silent on the covered taxes, they include revenues from "motor fuel taxes, vehicle excise (titling) taxes, motor vehicle fees (registrations, licenses and other fees), and federal-aid," among other revenue sources. *Transportation Trust Fund*, MD. DEP'T TRANSP., https://www.mdot.maryland.gov/tso/Pages/Index.aspx?PageId=85 [https://perma.cc/DV5H-JWVR].

APPENDIX B: OHIO ANTI-DIVERSION VOTER PAMPHLET

PROPOSAL SUBMITTED BY INITIATIVE PETITION Proposing Amendment to the Constitution of Ohio by Adopting a New Section to Be Known as Section 5a of Article XII.

To be submitted to the Electors of the State for their approval or rejection at the election to be held November 4, 1947

PROPOSAL TO PROHIBIT THE EXPENDITURE OF MONEYS DERIVED FROM CERTAIN TAXES RELATING TO VEHICLES FOR OTHE RTHAN HIGHWAY AND RELATED PURPOSES.

(Title)

An amendment of the Constitution of the State of Ohio, by adopting Section 5a of Article XII thereof, to prohibit the expenditure of moneys derived from certain taxes relating to vehicles for other than highway and related purposes.

TEXT OF PROPOSED AMENDMENT

BE IT RESOLVED BY THE PEOPLE OF THE STATE OF OHIO:

That the Constitution of the State of Ohio be amended by adopting a section to be designated as Section 5a of Article XII thereof, to read as follow:

ARTICLE XII

Section 5a. No moneys derived from fees, excises, or license taxes relating to registration, operation or use of vehicles on pub-lic highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of high-way obligations, costs for construction, reconstruction, mainte-nance and repair of public highways and fridges and other statu-tory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

SCHEDULE: The foregoing amendment shall take effect on the first day of January, 1948

FORM OF OFFICIAL BALLOT

PROPOSED AENDMENT TO THE CONSTITUTION OF OHIO

(Proposed by Initiative Petition)

VOTE BALLOT WITH AN X

Proposing to amend Article XII of the Constitution of Ohio by adopting a section to be designated as Section 5a to prohibit the expenditure of moneys derived from certain taxes relating to vehicles for other than highway and related purposes.

The proposed amendment prohibits the expenditure of fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways or to fuels used for propelling such vehicles, for purposes other than costs of administration, refunds and adjustments, payment of highway obligations, highway and bridge construction, reconstruction, maintenance and repair and other highway purposes, enforcement of traffic laws, and hospitalization of indigent persons injured in motor vehicle accidents on highways.

	YES	SHALL THE PROPOSED AMENDMENT, RELATIING TO THE EXPENDITURE OF MONEYS DERIVED FROM CERTAIN TAXES RELATING TO VEHICLES, BE ADOPTED?
	NO	

ARGUMENT IN FAVOR OF THE INITIATED PROPOSED AMENDMENT TO ARTICLE XII OF THE CONSTITUTION OF OHIO BY ADOPTING SECTION 5a

This Amendment simply says you want your automobile license and gas tax money to go for better roads and streets.

Many Ohio highways are behind the times, and must be improved for municipal traffic.

Many streets are dangerous traffic bottle-necks.

We are disgusted with slow moving traffic in congested areas, dusty, winter mired-in roads to rural districts, and alarmed at the traffic toll on narrow roads and bridges with death inviting curves.

You recognize this situation, be here's why we have it, and how to get rid of it -- without one cent in new taxes.

Ohio originally promised that automobile license and gas tax funds would go for roads, streets and related purposes. But temptation was too great and millions of theses special tax dollars have been and are being spend for other purposes. This is your chance to correct these conditions.

The same thing happened in other sates, but nineteen states, including Michigan, Pennsylvania, Texas, Iowa, California, Minnesota, Oregon and Kentucky, have acted to protect their road funds by amending their constitution. Ohio now has this opportunity.

So, it's time to act. Acting now, we collect funds for jobs which may be needed and protect lives on highways as where others have done.

Road and street improvement costs have increased. Ohio needs road money to tie-in with the promised federal highway program which will institute many city streets and rural roads. It is imperative that motor vehicle taxes be used exclusively for roads and streets.

Remember, this Amendment does not increase the rate of any tax nor place restriction on the allocation of revenues by the Legislature. It is your insurance for better roads and streets.

Vote "YES" for the "Voters Roads and Streets Amendment" and put Ohio on the honor roll of progressive states.

Committee for The Amendment { JAMES G. DALY, WALTER R. HAMER, J. RUSSELL LLOYD.

ARGUMENT IN OPPOSITION TO THE INITIATED PROPOSED AMENDMENT TO ARTICLE xii OF THE CONSTITUTION OF OHIO BY ADOPTING SECTION 5a

NO TAX REDCTION. This amendment holds no promise of a tax reduction if revenues thus provided for road purposes without specific appropriation around the actual needs for the roads, unnecessary expenditures and misuse of the excess funds will be encouraged.

NEW TAXES. The loss of highway revenues now appropriate from the general fund will, especially in depression years, require the imposition of taxes from other resources to replace the amount thus lost. This will be necessary to incur revenues for poor relief, welfare activities, and schools.

BAD POLICY. This amendment pieces together the legislature in a strait-jacket and severely handicaps it in applying the revenue of the state to the needs of the state. The Legislature could not use highway revenue for emergency purposes and the revenues from such taxes will have to be spent for roads and streets and for no other purpose.

NOT NEEDED. Taxes leveled upon automobile owners allocated by law for the constructing and maintenance of roads and streets are the 1c motor vehicle fuel tax and motor vehicle increase fees. The 1c per gallon liquid fuel tax is used to pay general governmental obligation. Liquid fuel tax revenues add approximately $15,000,000 annually in the state general revenue fund. Appropriations are now made by the Legislature from this fund to the Department of Highways and political sub-division. Since the Legislature can and has appropriated this money for highway purposes, the is no need for this amendment.

DISCRIMINATION. The Legislature has abolished the ear-marking of certain tax receipts for specific purposes, and places such revenues in the general fund to be appropriated as required in the public interests. This amendment makes an exception to this wise and workable policy. Why should gasoline and motor vehicle revenues be treated differently?

VOTE NO.

Committee Against The Amendment { D. R. STANFIELD LEROY PARSONS WALTON B. BLISS

APPENDIX C: ARIZONA ANTI-DIVERSION VOTER PAMPHLET

PLEASE READ CAREFULLY

STATE OF ARIZONA

INITIATIVE AND REFERENDUM

PUBLICITY PAMPHLET

1952

Containing a Copy of the

PROPOSED AMENDMENT TO THE CONSTITUTION

REFERENDUM

Referred to the People

by the Legislature

and

INITIATIVE MEASURES

Proposed by Initiative Petition of the People

To be Submitted to the Qualified Electors of the State of Arizona for their approval or rejection at the

REGULAR GENERAL ELECTION

to be held on

THE FOURTH DAY OF NOVEMBER, 1952

Together with the Arguments filed favoring certain of said measures

Compiled and Issued by

WESLEY BOLIN

Secretary of State

(Publication Authorized under Paragraph 60-107, Chapter 60, Article 1, Arizona Code Annotated, 1939)

To be submitted to the qualified electors of the State of Arizona for their approval or rejection at the

REGULAR GENERAL ELECTION

to be held

ON NOVEMBER 4, 1952

Referred to the People by the Legislature and filed in the office of the Secretary of State, March 14, 1952, and printed in pursuance of Paragraph 50-107, Chapter 60, Article 1, Arizona Code Annotated, 1939.

WESLEY BOLIN, Secretary of State

(On Official Ballot Nos.100-101)

HOUSE CONCURRENT RESOLUTION NO. 2

A CONCURRENT RESOLUTION
PROPOSING AN AMENDMENT OF THE CONSTITUTION OF ARIZONA RELATING TO THE EXPENDITURE OF REVENUES FOR HIGHWAY PURPOSES.

Be It Resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. The following amendment to the Constitution of Arizona, to be known as article IX, section 14 thereof, is proposed, to become valid as a part of the Constitution when approved by a majority of the qualified electors voting thereon and upon proclamation of the governor:

Section 14. No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for other than cost of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways and bridges, county, city and town roads and streets, and for distribution to counties, incorporated cities and towns in an amount not less than that as provided by law on July 1, 1952, to be used by them only for the purposes permitted by law on that date, expense of state enforcement of traffic laws, and payment of costs for publication and distribution of Arizona Highway Magazine, provided, however, that this section shall not apply to moneys derived from the automobile license tax imposed under section 11 of Article IX of the Constitution of Arizona.

2. The proposed amendment (approved by a majority of the members elected to each house of the Legislature, and entered upon the respective journals thereof, together with the ayes and nayes thereon) shall be by the secretary of state submitted to the qualified electors at the next regular general election (or at a special election called for that purpose), as provided by article XXI, Constitution of Arizona.

Passed by the House March 3, 1952, by the following vote: 38 Ayes, 21 Nays, 6 Absent, 7 Excused.

Passed by the Senate March 14, 1952, by the following vote: 15 Ayes, 2 Nays, 2 Not voting.

Filed in the Office of the Secretary of State - March 14, 1952.

WESLEY BOLIN, Secretary of State

The following is the form and number in which the question will be printed on the Official Ballot:

PROPOSED AMENDMENT TO THE CONSTITUTION
PROPOSED BY THE LEGISLATURE

HOUSE CONCURRENT RESOLUTION NO. 2

PROPOSING AN AMENDMENT OF THE CONSTITUTION OF ARIZONA RELATING TO THE EXPENDITURE OF REVENUES FOR HIGHWAY PURPOSES

If you favor the above law, vote YES; if opposed, vote NO.

100 YES ☐ 126,094

101 NO ☐ 48,409

AFFIRMATIVE ARGUMENT

REASONS WHY

THE BETTER ROADS AMENDMENT SHOULD BE APPROVED

BY VOTING 100 YES ☒

100 YES, RELATING TO THE EXPENDITURE OF REVENUES FOR HIGHWAY PURPOSES, a proposed amendment to the Arizona Constitution, is being submitted to the people by Resolution of the Legislature.

POPULARLY CALLED THE BETTER ROADS AMENDMENT, its purpose is to INSURE THE EXPENDITURE OF ALL REVENUES DERIVED FROM ROAD USERS TO ROAD USES ONLY. These road uses (highway purposes) are delineated in the amendment. They include costs of building and repairing public highways, streets, and roads in the state, counties, cities, and towns and costs attendant thereto such as: administration, refunds, bonding, traffic enforcement, and the ARIZONA HIGHWAYS magazine.

REVENUES IN ARIZONA are derived from state gasoline and diesel taxes, registration fees, unladen weight fees on common and contract motor carriers, and motor carrier taxes based on gross receipts. Road users in the fiscal year '51-52 paid $13,545,135. in motor fuel taxes and $5,620,930. in motor vehicle excise taxes. 100 YES would not apply to revenues from the

automobile license property tax (in lieu tax) which goes to state, county, city, and school general funds and is not included in the above figures.

BY AN AVERAGE OF 2-⅝ to 1, the citizens of 21 states, including seven neighboring western states, have already adopted amendments to their constitutions earmarking all road user taxes for roads.

100 YES CARRIES THE ENDORSEMENT OF a variety of ARIZONA'S CITIZEN GROUPS, such as:

Arizona Automobile Associations
Arizona Automobile Dealers Assn.
Ariz. Bottlers of Carbonated Beverages
Arizona Cattle Growers' Assn.
Ariz. Chambers of Commerce Mgrs. Assn.
Arizona Citrus Exchange
Arizona Cotton Growers' Assn.
Arizona Dairymens' League
Arizona Farm Bureau Federation
Arizona Good Roads Association
Arizona Highway Commission
Arizona Hotel Association
Arizona Milk Producers Assn.
Arizona Motor Hotel Assn.
Arizona Motor Transport Assn.
Arizona Petroleum Industries Com.
Ariz. Rural Letter Carriers Assn.
Arizona Small Mine Owners Assn.
Arizona Supervisors and Clerks Assn.
Arizona Tire Dealers Assn.
Arizona Vegetables Growers Assn.
Arizona Woolgrowers Assn.
Associated Equipment Distr.
Associated General Contractors
Central Ariz. Cattle Feeders Assn.
Desert Citrus Growers Assn.
Implement Dealers Assn.
Maricopa County Farm Bureau
Portland Cement Assn.
Retail Lumber & Bldg. Supply Assn.

WHY DO SO MANY DIFFERENT PEOPLE WANT THE BETTER ROADS AMENDMENT? Because they, and we, all share a common problem—the need for better roads: (1) to secure needed improvements in our highway transportation system; (2) to reduce our accident toll; (3) to alleviate traffic congestion in urban areas; (4) to reach standards of economical operation and convenient use in suburban and rural areas; (5) to strengthen lines of communication in Arizona, whether needed for business such as: farm-to-market, or for vacationing pleasure.

THE ONLY WAY TO BE SURE WE HAVE BETTER ROADS is to be sure of our revenues for roads.

IF USED FOR ROAD PURPOSES, the road user taxes are fair because they are based on benefits received by the taxpayer. The user pays as he drives. If not used for road purposes, these user taxes become unfair because they are not based on benefits received, ability to pay, or the taxpayer's interest. Congress, in passing the Hayden-Cartwright Amendment of 1934, declared: "It is unfair and unjust to tax motor vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways."

OF PARAMOUNT IMPORTANCE to the United States as a nation is its network of highways—arteries of commerce in peacetime, the lifeline of defense in wartime. The federal government grants aid to the states for construction of primary, secondary, and urban highways. This aid in Arizona is 72¢ for each 28¢ spent for construction by state, county, or city, but only if the Arizona user tax revenues are used exclusively for public highway, street, and road purposes.

SINCE SO MUCH of the land area of Arizona, fifth largest state in the nation, is owned or controlled by the federal government, the need for federal help is great. WHY JEOPARDIZE FEDERAL AID BY ALLOWING ANY DIVERSION OF ROAD USER TAXES TO OTHER THAN ROAD PURPOSES?

PUBLIC POLICY IN ARIZONA has consistently opposed diversion, although there have been CONSTANT THREATS TO HIGHWAY FUNDS in bills introduced from time to time in the legislature. In the meantime, in other states not having a Better Roads Amendment, diversion of road user funds MORE THAN DOUBLED IN THE FOUR YEAR PERIOD FROM 1946 - 1950, from $97,579,000. to $217,038,000.

ARIZONA IS IN A PARTICULARLY FAVORABLE POSITION TO ADOPT 100 YES this year, because it is not now diverting its road user taxes.

THEREFORE 100 YES WILL ENTAIL NO CHANGE in the source or expenditure of highway revenues. Nor will it make any change in provisions of the initiated measure allocating gas taxes to the state, 3½¢; counties, 1¢; cities, ½¢ per gallon.

WITH A STABILIZED SOURCE OF highway revenues, 100 YES will insure the continuity of improvement needed to complete such desirable roads as the Black Canyon Highway. This vital, 100-mile North-South link from Phoenix to Prescott and the Camp Verde leg to Flagstaff will connect with East-West traffic in and thru Arizona. The Prescott leg has required five years to construct at an average cost of $50,000. a mile. Arizona will spend $1½ million in its construction, while the federal government will grant $3½ million.

OVER 50% OF THE COMMUNITIES in our state have no rail or airport facilities. For welfare, security, growth, and prosperity, the citizens of these communities depend upon highway transportation. Whether they truck to the nearest railroad point or haul all the way to market, whether their production is industrial, agricultural, or mineral, these citizens must have better roads. Arizona's growth demands their needs be met.

THE NEWEST BUSINESS IN THIS BABY STATE is the $200,000,000. tourist industry. The vacationing public is attracted to those states which have better roads. Those states which neglect their roads thru diversion of revenues, will be neglected by tourists—more than 75% of whom travel by automobile or bus. Arizona must provide good roads not only into and thru the state, but also to vacation spots and scenic and historic points of interest within the state.

SIGNIFICANTLY, 45% OF THE RECEIPTS from the gas tax in Arizona is paid by out-of-state motor vehicle owners. This large tax on non-residents may be justified by using their moneys for the roads they use.

ARIZONA'S GEOGRAPHY IS such that most Arizonans depend upon motor transportation in order to reach their work, markets, and recreation. They have a right to expect that the taxes they pay give them their money's worth in good roads.

MANY ARIZONA CITIZENS ARE EMPLOYED IN ROAD WORK. Because road construction cost is 90% labor, road work is as desirable in bad times as good.

THE VERY SORT OF PEOPLE who, years ago, did not want to pay for needed highways out of general funds of the state, and so devised the gas tax, now look longingly at the highway fund and all to often bring pressures in the legislature to appropriate these revenues to other than highways.

AS SO MANY STATES have discovered in the past ten years, there is only one sure way to put an end to diversion, or the threat of diversion—that is, by the ADOPTION OF A CONSTITUTIONAL AMENDMENT SUCH AS THIS BETTER ROADS AMENDMENT, Proposition 100, Relating to the Expenditure of Revenues for Highway Purposes. KEEP PACE WITH ARIZONA'S PROGRESS. VOTE 100 YES; AT THE TOP OF THE BALLOT ON THE RIGHT HAND SIDE.

ARIZONA BETTER ROADS COMMITTEE
/s/
A. J. Fram
Chairman