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### **Statement from ABOR Chair Larry Penley on AZ Superior Court Ruling on AG Lawsuit**

“In a [ruling issued today](#), the Arizona Superior Court dismissed all three counts that the Arizona Attorney General asserted in January in his latest lawsuit against the Arizona Board of Regents. In doing so, the court recognized the authority of the board to govern Arizona’s public universities - Arizona State University, Northern Arizona University and the University of Arizona - in the best interest of the people of the state. The board is very appreciative of the court’s decision, which reaffirms the trust placed in the board by the Arizona Constitution. This is the second time in two years that a court has so held.

“The court denied the board’s request to dismiss the Attorney General’s claim that the proposed property transaction violated the Arizona Constitution’s gift clause, but it did so on the very limited grounds that the claim was not barred by the statute of limitations. The court rejected the Attorney General’s argument that the applicable statute of limitations was five years instead of one year and made clear that the Attorney General will be able to proceed only if he can prove that he did not know and should not have known of the facts regarding a possible gift clause claim more than a year before making the claim. This seems unlikely given that the Omni project has been publicly discussed for years before he filed his lawsuit, has gone through multiple public approval processes and has been covered in the press dozens of times.

“The Attorney General’s claim that he did not know about the facts of the transaction until March is inconsistent with the fact that he filed this lawsuit in January challenging this same transaction on other grounds.

“Moreover, the court has yet to address the board’s further argument that there is no gift clause violation because of the significant benefits of this project to students, Arizona State University and the City of Tempe.

“The board has been transparent in its discussion and approval of this project. The Attorney General’s judgment in bringing this lawsuit after so much public discussion and review is questionable and has forced the board to spend considerable monies that could have been used on students.

“On behalf of Arizona’s students and families, we remain committed to continuing our work to ensure a quality higher education continues to remain within reach of Arizona families and that our public universities remain sustainable for future generations.

“This is what makes a real difference for the people we serve.”

#### Background from the Arizona Board of Regents and Arizona State University

This is the second time in two years that Arizona courts have rejected the Attorney General’s attempts to interject his opinions in the operations of Arizona’s university system. In September 2017, the

Attorney General targeted the board's tuition setting authority, claiming that the Board of Regents had violated the Arizona Constitution.

Last year, Superior Court Judge Connie Contes dismissed the Attorney General's claim regarding tuition on the grounds that the Attorney General did not have authority to bring that claim. That decision is now on appeal to the Arizona Court of Appeals.

In January 2019, the Attorney General challenged the board's decision to lease property adjacent to the ASU campus for the purpose of building a hotel and conference center. Judge Christopher Whitten has now ruled that the Attorney General did not have the authority to micromanage the utilization of university property.

The court noted that "the Omni Deal is a lease, and the Board is expressly empowered to enter into leases." In addressing the Attorney General's argument that he was nevertheless entitled to second guess the board, Judge Whitten stated, "This logic is dubious," and held, "whether a transaction is 'for the benefit of this state' is a matter of discretion left to the body authorized to enter into the transaction, here, the Board of Regents."

Also before Judge Whitten was the board's request to dismiss the Attorney General's claim that the proposed transaction violated the Arizona Constitution's gift clause, which ensures that the public is adequately benefitting from economic development projects.

Although Judge Whitten denied the Regents' request, he did so only on the very limited basis that it was not barred by the one-year statute of limitations. (The court rejected the Attorney General's argument that the applicable statute of limitations was five years.) The court made clear that the AG will be able to proceed only if he can prove that he did not know or should not have known of the facts regarding a possible gift clause claim more than a year before making this claim. The Attorney General will have a hard time making such a showing given the many public hearings before the board, the City of Tempe and the state legislature, regarding this transaction.

The court did not address ABOR's further arguments that, as a matter of law, the Omni Deal does not violate the Gift Clause. As ABOR has shown, the Attorney General's gift clause claim is based on two false premises, the first being that ASU is "evading taxes," thus depriving K-12 of resources. Private landowners pay property taxes and a portion of that goes to funding the K-12 system. But, the Arizona Constitution exempts all state property from taxation and that includes the land involved in this case – a fact prominently noted by the court in rejecting the AG'S argument that he had authority to sue to enforce tax statutes: "As a matter of law, the property on which the Attorney General seeks to collect tax is constitutionally exempt from taxation. There is thus no tax owing, and nothing for the Attorney General to enforce."

In short, regardless of whether the lease transaction proceeds, this property has been and will continue to be state property that is exempt from taxation. There are no property taxes to "evade," and there never will be so long as the board owns this property.

In addition, there is no gift clause violation because in return for a \$25 million investment, ASU will receive a much needed hotel and conference center and \$124 million in lease payments. ASU is not in the real estate business. It is in the education business and the \$99 million that ASU will net will be used to further its mission of educating the students of Arizona.

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