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COPY

SEP 30 2015



MICHAEL K. JEANES, CLERK
A. DENVER
DEPUTY CLERK

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LAUREN KUBY,

Plaintiff,

vs.

STATE OF ARIZONA,

Defendant.

Case No.:

CV2015-011434

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiff, by and through her attorneys, for her complaint against
Defendant, hereby allege as follows:

NATURE OF THE ACTION

1. This action seeks a Declaratory Judgment that Senate Bill 1241
enacted by the Fifty-second Legislature, First Regular Session 2015 ("SB 1241")
is unconstitutional because it violates the title and single subject provisions of the
Arizona Constitution Article 4, pt. 2 § 13 and the home-rule provision of the
Arizona Constitution, Article 13 § 2.

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PARTIES

2. Plaintiff Lauren Kuby is a resident of the City of Tempe which is a charter city. She is a member of the Tempe City Council who advocates on behalf of the community on local issues ranging from the environment to homelessness. She was elected in August 2014. She also serves as a volunteer for, and advisor to, energy conservation organizations.

3. In Spring 2015, Ms. Kuby gained approval from City Council members at their "Committee of the Whole" meeting to move forward with consideration of a plastic-bag ordinance. She participated in City Council Work Study Sessions with stakeholders regarding a city ordinance that would prohibit single-use plastic bags at grocery and retail stores in Tempe. The proposed ordinance would allow the grocers/retailers to charge a minimum of 10 cents for a paper bag, should customers not bring a reusable bag with them into the store. Discussions regarding the Tempe city ordinance have been directly impacted by SB 1241 because it prohibits municipalities from regulating auxiliary containers, including single-use plastic bags.

4. Ms. Kuby is affected by SB 1241 in numerous ways. As a resident and elected official of the City of Tempe, she has an interest in upholding the right of chartered cities to control local issues. Ms. Kuby is interested in her city adopting a single-use plastic bag ordinance, and SB 1241 prohibits that.

5. The state of Arizona is a body politic.

1 JURISDICTION AND VENUE

2 6. This action arises under state law and the Arizona Constitution. This
3 Court has jurisdiction pursuant to A.R.S. §§ 12-123 and 12-1831 et seq.
4

5 7. Venue is proper in Maricopa County pursuant to A.R.S. §12-401.

6 STATEMENT OF FACTS

7 8. On January 28, 2015, SB 1241, a bill titled "Relating to the Arizona
8 health care cost containment system administration" was first read in the Arizona
9 State Senate. As introduced, SB 1241 was passed by the Senate and transmitted to
10 the House of Representatives on February 23, 2015.
11

12 9. On March 18, 2015, a strike-everything amendment was made to SB
13 1241 by the House of Representatives.

14 10. The strike-everything amendment prohibits a municipality from
15 requiring an owner, operator or tenant of a business, commercial building or
16 multifamily housing property to measure and report energy usage and
17 consumption. The amendment also prohibits a municipality from imposing a tax,
18 fee, assessment charge or return deposit for auxiliary containers, including
19 reusable bags, disposable bags, boxes, beverage cans, bottles, cups and containers
20 made of cloth, plastic, extruded polystyrene, glass, aluminum, cardboard or other
21 similar materials.
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23

24 11. SB 1241 as amended was approved by the House and given a new
25 title "Relating to energy regulatory prohibition." It was transmitted to the Senate
26 where it was approved on April 2, 2015 and transmitted to the Governor.

1 12. SB 1241 as amended was signed by the Governor on April 13, 2015
2 and became effective on July 3, 2015.

3 13. The provisions of SB 1241 combine two unrelated subjects in
4 violation of the single subject provision of the Arizona Constitution. Energy
5 benchmarking and the regulation of auxiliary containers are unrelated matters that
6 should not be contained within one bill.

7 14. The title of SB 1241 as amended indicates that the legislation relates
8 to "energy regulatory prohibition." That title provides no notice to legislators or
9 the public that it includes provisions regarding the regulation of auxiliary
10 containers.

11 15. The City of Bisbee previously enacted an ordinance that prohibits
12 single-use plastic bags in retail establishments, and the cities of Tempe and
13 Flagstaff were in the process of engaging stakeholders in designing a possible
14 plastic bag ordinance at the time SB 1241 was enacted. The City of Phoenix was
15 studying the cost-benefits of implementing an energy-measuring ordinance.

16 16. In enacting SB 1241, the Arizona Legislature declared that
17 dispensing of plastic bags by retailers to be a matter of statewide concern.

18 However, trash collection, waste management, and recycling have been under the
19 purview of Arizona cities historically and have not been the subject of statewide
20 concern.

21 17. By limiting the ability of local communities to require commercial
22 building and multifamily residence owners to measure and report their energy
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1 usage, this bill also declares energy benchmarking a statewide issue. However, the
2 data show that this is a local issue, indicating that energy benchmarking policies
3 directly affect the local economy by increasing the number of local jobs and
4 decreasing the operating costs of local businesses through energy savings.
5

6 18. Plaintiff was harmed when SB 1241 combined the prohibition of
7 energy benchmarking requirements with the provisions regarding the regulation of
8 auxiliary containers. The Plaintiff is interested in her city adopting a plastic bag
9 ordinance and SB 1241 prevents cities from doing so. The Plaintiff was also
10 harmed when the title of SB 1241 failed to provide notice that it included
11 provisions unrelated to the prohibition of energy regulation. Furthermore, the
12 Plaintiff was harmed when SB 1241 declared energy benchmarking and plastic
13 bag bans statewide issues instead of leaving to municipalities the ability to control
14 these local issues.
15
16

17 **FIRST CLAIM FOR RELIEF**

18 **(Violation of Single-Subject)**

19 19. Plaintiff incorporates by reference paragraphs 1 through 18 as
20 though fully set forth herein.
21

22 20. Article 4, pt. 2 §13 of the Arizona Constitution provides that:

23 Every Act shall embrace but one subject and matters properly connected
24 therewith, which subject shall be expressed in the title; but if any subject
25 shall be embraced in an Act which shall not be expressed in the title, such
26 Act shall be void only as to so much thereof as shall not be embraced in the
title.

1 21. The purpose of this provision is to prevent surprise and surreptitious
2 legislation by logrolling unrelated legislative goals in order to attract a majority.

3 22. Because SB 1241 combines two unrelated subjects that were
4 logrolled together, it embraces more than one subject and violates Article 4, pt. 2
5 §13 of the Arizona Constitution.

6 23. Pursuant to Article 4, pt. 2 §13 of the Arizona Constitution, because
7 the bill violates the single subject requirement, the entire bill is unconstitutional.
8

9 24. Plaintiff is entitled to recover her attorneys' fees pursuant to the
10 private attorney general doctrine.
11

12 WHEREFORE, Plaintiff requests that this Court:

13 a. Declare that SB 1241 violates Article 4, pt. 2 §13 of the
14 Arizona Constitution because it includes more than one subject;

15 b. Grant further relief as the Court deems appropriate;

16 c. Grant Plaintiff her attorneys' fees.
17

18 **SECOND CLAIM FOR RELIEF**

19 **(Violation of Title Requirement)**
20

21 25. Plaintiff incorporates by reference paragraphs 1 through 24 above as
22 though fully set forth herein.

23 26. As set forth in paragraph 20 above, Article 4, pt. 2 §13 of the
24 Arizona Constitution expressly requires that the subject of a bill be expressed in
25 the title.
26

1 27. Because the title of SB 1241 fails to include any reference to the
2 prohibition of municipalities from regulating auxiliary containers, the title does
3 not properly embrace provisions of the bill that were added by amendment;
4 therefore SB 1241 violates Article 4, pt. 2 § 13 of the Arizona Constitution.
5

6 28. Pursuant to Article 4, pt. 2 §13 of the Arizona Constitution, because
7 those provisions related to the regulation of auxiliary containers were not
8 expressed in the title of the bill, the provisions are unconstitutional.
9

10 WHEREFORE, Plaintiff requests that this Court:

11 a. Declare that SB 1241 violates Article 4, pt. 2 § 13 of the
12 Arizona Constitution because its title does not embrace all of the subjects
13 addressed in the bill;

14 b. Declare that the provisions in SB 1241 that address the
15 regulation and prohibition of auxiliary containers are void;

16 c. Grant further relief as the Court deems appropriate;

17 d. Grant Plaintiff her attorneys' fees.
18

19 **THIRD CLAIM FOR RELIEF**

20 **(Violation of Home-Rule)**

21
22 29. Plaintiff incorporates by reference paragraphs 1 through 28 as
23 though fully set forth herein.

24 30. Article 13 § 2 of the Arizona Constitution, known as the home-rule
25 provision, gives charter cities certain rights and privileges in local matters to
26 legislate free from interference by the legislature.

1 31. The purpose of the charter-city provision in the Arizona Constitution
2 is to render the cities adopting such charter provision as nearly independent of
3 state legislation as possible.
4

5 32. Because SB 1241 legislates over the local issues of energy
6 benchmarking and the regulation of auxiliary containers, it violates Article 13 § 2
7 of the Arizona Constitution.
8

9 33. Pursuant to Article 13 § 2 of the Arizona Constitution, because the
10 bill violates the home-rule requirement, the entire bill is unconstitutional.
11

WHEREFORE, Plaintiff requests that this Court:

12 a. Declare that SB 1241 violates Article 13 § 2 of the Arizona
13 Constitution because it legislates over the local issues of energy
14 benchmarking and the regulation of auxiliary containers, which fall under
15 the control of charter cities.
16

17 b. Declare that the provisions in SB 1241 do not apply to charter
18 cities;

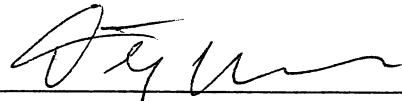
19 c. Grant further relief as the Court deems appropriate;

20 d. Grant Plaintiff her attorneys' fees.
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RESPECTFULLY SUBMITTED this 30th day of September, 2015.

ARIZONA CENTER FOR LAW IN
THE PUBLIC INTEREST

By 

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