

PLAINTIFFS SETTLE SCHOOL INFLATION FUNDING CASE

On October 30, Governor Ducey signed legislation enacted by the legislature in special session that settles the school inflation funding case so long as it is approved by voters next May 17.

Don Peters and the Center represent the Plaintiffs in the lawsuit. The Plaintiffs include the Arizona School Boards Association, the Arizona Education Association, the Arizona Association of School Business Officials and school districts and individuals. The lawsuit began in 2010 contending that the legislature had failed to appropriately fund inflation for public schools as required by Proposition 301 which was approved by voters in 2000. In 2013, the Arizona Supreme Court determined that the legislature must comply with Proposition 301 and remanded the case to the trial court to determine exactly what that meant. In September 2014, the trial court entered judgment for the Plaintiffs on the base level amount that should be reset and funded going forward. The legislature appealed that judgment. The trial court has yet to issue a decision on the amount of back pay, if any, that was owed to the school districts for the years that inflation funding was not paid.

The settlement provides over \$300 million each year over the next ten years for a total of \$3.5 billion. The settlement agreed to by the Plaintiffs and the legislature resets the base level for future funding to 72% of

where the Plaintiffs think it should have been and provides \$625 million in additional funding to school districts and charter schools over the next ten years. The inflation funding requirement is permanent and extends indefinitely beyond the ten years.

A majority of the funding for the settlement will come from the state land trust. This is a trust fund that consists of proceeds from the sale of lands deeded to the state when it entered the Union in 1912 as well as earnings from those proceeds that have accumulated over time. Currently, the balance in the fund is approximately \$5 billion and it is distributed at the rate of 2.5% of the previous five year average balance. The settlement that was approved will increase that distribution for ten years to 6.9% after which it will revert to the current 2.5%. Without the settlement, it is estimated that the trust fund balance would be approximately \$9 billion in ten years. With the settlement, it is expected that the balance will be reduced to about \$6 billion.

The settlement requires voter approval because it changes certain portions of the Arizona Constitution regarding not only the inflation requirement but also the distribution of the state school land trust. There will be special election on May 17, 2016 at which voters will be asked to approve or reject the settlement.

While the settlement does not represent the full amount that we could have achieved under a “best case scenario” had we continued litigation in court, it represents over 90% of the full inflation funding that would otherwise have been paid to public schools over the next ten years. Given the potential for delay by several years to the conclusion of the litigation and the uncertainty associated with the ultimate outcome, the Plaintiffs determined that it was important to get substantial funding into Arizona schools now as opposed to waiting for an uncertain outcome later.

Judge Refuses to Dismiss Foster Care Lawsuit

On September 30, 2015, Judge Roslyn Silver denied the defendants’ motion to dismiss the lawsuit brought by the Center and others against the State of Arizona asserting that the state has violated the civil rights of nearly 17,000 foster children.

The lawsuit was filed in February in U.S. District Court on behalf of a class of foster children. In it, we claim that the state fails to provide needed mental and other health care, and enough foster homes for children removed from their fami-

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Foster care continued...

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lies. The defendants, the head of Arizona's child welfare and health services agencies, had asked the court to dismiss the lawsuit, arguing that the court should abstain because the foster children had ongoing dependency proceedings in the Arizona juvenile courts, and federal abstention doctrines regarding interference with state proceedings applied.

In a thorough, thirty- page order, Judge Silver disagreed. As she explained in her Order, "if the Court abstained here, the effect would be that Plaintiffs would not be allowed to seek relief in federal court for alleged egregious broad and systemic federal constitutional violations. That would be a wrong result..." The Court further concluded that based on the allegations of the Complaint, the court could fashion a remedy that would not impinge on individual judicial proceedings. The Order is available at the Center's website, www.aclpi.org.

THANK YOU
The Center would
like to thank
LEXIS-NEXIS
for its continuing
grant of
computerized
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services.

Tim Hogan Honored - Twice in One Month!

Here at the Center, we think Tim Hogan is pretty remarkable, and it is always nice to see him get the recognition he deserves. This past month, he got a double dose!

On Thursday, October 29th, the William E. Morris Institute of Justice honored Tim at its annual Phoenix fundraiser, held at the University Club. Sierra Club's Sandy Bahr introduced Tim and in her remarks she recounted the numerous times that Tim has collaborated with others on important litigation.; Paul Eckstein also spoke and he observed that there is hardly an area of law that Tim hasn't litigated, including school funding, consumer protection, utility rates, environmental protection, and the constitutionality of laws.

Earlier in the same week, on Tuesday, October 27th, Tim was inducted into the Maricopa County Bar Association Hall of Fame. The Hall of Fame was created in 2008 through the MCBA by then-president, Hon. Glenn Davis. It seeks to honor in perpetuity those remarkable individuals who have built the legal profession in Maricopa County and beyond, who have made extraordinary contributions to the law and justice, and who have distinguished themselves at the highest levels of public service.

To date, 115 lawyers and judges have been inducted into the Hall of Fame. The other 2015 inductees included Hon. Elizabeth Finn, Susan Freeman, Hon. John Gemmill, Kevin O'Malley, Van O' Steen, Hon. Ron Reinstein, Charles Wirken, C.A. Carson and Hon. Raul Castro.

CENTER FILES LAWSUIT TO CHALLENGE LEGISLATIVE BAN ON CITIES' REGULATION OF PLASTIC BAGS AND ENERGY BENCHMARKING

On September 30, the Center filed a lawsuit on behalf of Lauren Kuby, a member of the Tempe City Council, to challenge Senate Bill 1241 which was signed into law on April 13, 2015.

SB 1241 prohibits cities and towns from regulating the sale, use or disposition of "auxiliary containers" including single use plastic bags that are commonly used in many grocery stores and other retail outlets. The legislation also bans cities and towns from requiring a business owner to report energy usage and consumption to promote energy efficiency. This practice is commonly referred to as "energy benchmarking."

At the time SB 1241 was approved, the cities of Tempe and Flagstaff were considering enacting ordinances limiting the use of plastic bags in grocery stores. The city of Bisbee already had such an ordinance in place. The proposed ordinance in Tempe would have allowed grocers and retailers to charge a minimum of 10 cents for a paper bag if customers forgot to bring a reusable bag with them into the store. Plans for moving forward with that

proposal were tabled once SB 1241 was enacted.

The lawsuit was filed by the Center in Maricopa County Superior Court. The Center alleges that the legislation is unconstitutional on three grounds. First, it combines multiple subjects into a single bill which violates the single subject provision in Article 4 of the Arizona Constitution. Single use plastic bags and energy benchmarking have nothing in common and should have been addressed in separate bills.

Second, the bill violates the title requirement of the Arizona Constitution that requires that the subject of a bill be expressed in the title. In this case, the title of the bill is "relating to energy regulatory prohibition" which fails to provide notice that it involves prohibiting cities from regulating single use plastic bags. Finally, the lawsuit contends that SB 1241 violates the home rule provision of the Arizona Constitution which prohibits the legislature from dictating matters of local concern to charter cities in Arizona. The regulation of plastic bags is a matter of local concern because it impacts

trash collection, waste management and recycling - - all of which have historically been matters under the control of Arizona cities.

The Plaintiff in the case, Lauren Kuby, is hopeful the lawsuit will prevent the state from usurping local control in the future saying that "cities should be left alone to do what they do best: discover the most efficient and thrifty solutions to pressing local challenges, like waste."

Judge Gerlach Upholds Medicaid Expansion

In a decision issued on August 26, 2015, Judge Gerlach held that the hospital assessment passed by the legislature in 2012 to fund the expansion of Medicaid was constitutional. The issue at the core of the lawsuit is the plaintiffs' claim that the hospital assessment is a "tax" subject to a 2/3 vote. This case commenced when Governor Brewer was still in office.

When Governor Ducey was elected questions arose about how vigorously the state would defend the lawsuit so four individuals who were able to enroll in AHCCCS as a result of the expansion intervened. They are represented by the Center and the Morris Institute for Justice.

In his decision, Judge Gerlach held that the assessment was constitutional because it was a fee, and, therefore, only required a majority. The plaintiffs have appealed.

*It's that time of year again—in the coming weeks we will be launching our annual **end of year fundraising campaign.***

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