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THE CENTERLINE

SCHOOL FUNDING FIGHT CONTINUES

Beginning October 27, we were in court for five days to present evidence about why the state should retroactively reimburse Arizona's public schools $1.3 billion for unpaid inflation adjustments for fiscal years 2011 through 2014. Maricopa County Superior Court Judge Katherine Cooper presided over the hearing and listened to evidence from school districts struggling to educate children in the face of substantial budget cuts over the last five years.

School district representatives testified that the $1.3 billion distributed statewide would help to mitigate some of the impacts of those budget cuts. The school district representatives told the Judge that they could productively use the funds to address numerous needs that have been neglected due to a lack of funding.

They testified that the funds which the Plaintiffs have asked be repaid over a five year period could be used to replace textbooks that in many cases are eight or more years old, purchase new curriculum, and acquire the technology necessary to support 21st century classrooms.

Additionally, even though the funds could not be used to fund new teaching positions because they would be provided on a one time only basis, the school districts testified that stipends could be provided to teachers to help with recruitment and retention problems that districts throughout the state are experiencing.

The state and legislature's witnesses disputed the needs of the school districts and claimed that there was no money in the state treasury to support a $1.3 billion payment. They testified that the state budget had been cut so much during the recession that it could not absorb any additional reductions and that the legislature would not entertain any kind of a tax increase to repay the funds. They also testified that the state was facing budget deficits over the next two years even without regard to the funding obligations associated with this case.

The Plaintiffs' expert financial witness, who had worked under Governor Napolitano, testified that the reason for the ongoing structural deficits was because of the almost annual tax cuts over the last 20 years that have had the cumulative effect of reducing revenues to the state by $3 billion. In fact, the legislature enacted delayed tax cuts in 2011 that began to be implemented in 2014 and are being phased in over the next several years.

The Plaintiffs' expert testified that the $1.3 billion could be repaid if the state would only delay the tax cuts for five years and use monies that the state had accumulated in the budget stabilization fund of $460 million. Indeed, the state had set aside $460 million during two of the years that it failed to pay inflation funding to public schools.

Judge Cooper is expected to issue her decision by the end of the year. In the meantime, she entered a judgment on August 20 that establishes the state's obligation to fully fund inflation at the correct level from this point forward. That means that the state would be required to fund an additional $330 million this fiscal year in order to provide school districts with the inflation funding that the voters approved when they passed Proposition 301 in 2000.

The state appealed that decision to the Arizona Court of Appeals. More recently, the Governor announced that she believes the state should settle the matter on terms that the Plaintiffs have offered. Months ago, the Plaintiffs had offered to forego the retroactive payments in exchange for the state agreeing to fund public schools at the correct level going forward. That means that the schools would have given up the onetime payment of $1.3 billion in exchange for additional funding this year and in succeeding years of $330 million.

Despite the Governor's support for such a settlement, there has been no indication that the legislature shares her view. Instead, based on the evidentiary hearing, it appears as if the state and the legislature are taking the position that they are simply out of money and are uninterested in delaying tax cuts to comply with the law and fund public schools as required by voters.

The Center is co-counsel in this matter along with Don Peters of Peters, Cannata & Moody, PLC.

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NINTH CIRCUIT SCHEDULES FLORES HEARING

The U.S. Court of Appeals for the Ninth Circuit has scheduled a hearing on our appeal in *Flores v. Huppenthal* for January 12, 2015. Last year, we filed an appeal from the District Court's decision that the state's language acquisition programs for public schools were now in compliance with the Equal Educational Opportunities Act and that the case should therefore be dismissed. This came after a remand from the United States Supreme Court decision in 2009 that determined no particular level of funding was required by the EEOA. The case was remanded to the District Court for a determination of whether the state and Nogales Unified School District had programs in place that complied with the EEOA.

During a 23 day trial in 2010, the state, legislature and superintendent of public instruction attempted to defend the state's requirement that English language learners spend four hours of each academic day in English language development. We contended that the four hour requirement denied English language learners access to the academic curriculum in violation of the EEOA.

We produced evidence that the four hour model produced no better results than a two hour model, a bilingual model or even no program at all. Finally, we argued that segregating English language learner students for four hours a day was unlawful discrimination because other less segregative alternatives were available that were at least as effective as the four hour model.

The United States Department of Justice filed an amicus brief supporting our position.

Center Challenges EPA's Approval of the Phoenix PM-10 Plan

On July 29, 2014 the Center filed a Petition for Review challenging EPA's approval of a revision to the Arizona State Implementation Plan under the Clean Air Act.

Because the Phoenix metropolitan nonattainment area failed to attain the National Ambient Air Quality Standard for PM-10 by December 31, 2006, section 189(d) of the Clean Air Act requires the state to submit "plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area."

Arizona initially submitted a 5% plan in 2007, but when EPA proposed a partial disapproval, the state withdrew the plan to avoid the sanctions clock that the proposed disapproval would trigger. The state then submitted a substitute plan in May 2012, which EPA has now approved.

Although Petitioners have raised several issues with the 2012 Plan, the most significant issue is the state's reliance upon the Act's exceptional events rule to demonstrate that it has "attained" the standard. The 24 hour standard for PM-10 is 150 $\mu g/m^3$, not to be exceeded more than once per year on average over 3 years. According to the monitors located throughout the nonattainment area, however, the area continues to record values far in excess of that standard, particularly during the monsoon season. In the 5% plan, the state was only able to "attain" the standard if 135 exceedances (readings over 150

(Continued on page 3)

REDISTRICTING CASE GOES TO U.S. SUPREME COURT

On October 2, the United States Supreme Court decided that it will review a case brought by the Arizona legislature to void congressional districts that had been established by the Arizona Independent Redistricting Commission (IRC). The IRC was established by Arizona voters in 1998 when they approved Proposition 106 which removed redistricting authority from the Arizona legislature and established an independent commission to conduct redistricting every ten years.

The case was originally brought by the Arizona legislature in June 2012. In its complaint, the legislature claims that Proposition 106 establishing the IRC violates the Elections Clause of the United States Constitution. The Elections Clause provides that "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators." The legislature argued that because the word "legislature" means "the representative body which makes the laws of the people," the clause only allows the legislature and not an independent commission to prescribe the time, place and manner of holding elections for Congress. The legislature argued that the IRC cannot constitute "the legislature" as that term is used in the elections clause because the IRC is not a representative body.

The case was heard by a three judge panel in Phoenix which issued its decision in February. In a 2 – 1 decision, the court rejected the legislature's argument saying that the relevant inquiry is not whether Arizona has uniquely conferred its legislative power in representative bodies but whether the redistricting process the state has designated results from the appropriate exercise of state law. The court said there was no dispute that the IRC was created through the legislative power reserved in the people through the initiative with the specific purpose of conducting the redistricting within the state and that in exercising its functions the IRC exercises the state's legislative power.

The Center filed an amicus brief on behalf of Dennis Burke and Bart Turner (two of the drafters of Proposition 106), the Arizona Advocacy Network, the Arizona League of Women Voters and the Inter Tribal Council of Arizona. The amicus brief made the point that the Arizona Voter Protection Act also approved by voters in 1998 prohibits any legislative action that would have the effect of repealing a voter initiative. The court rejected the argument saying that the text of the Voter Protection Act refers to the legislature passing a bill to repeal or amend a duly approved initiative, not the filing of a lawsuit that asserts the initiative is invalid because it violates the United States Constitution.

The Center will continue to support the Arizona Independent Redistricting Commission in the United States Supreme Court and plans to file an amicus brief emphasizing that, in Arizona at least, the people are the supreme legislative power and that an overly narrow interpretation of the Elections Clause allowing only the legislature to conduct redistricting would effectively negate provisions of the Arizona Constitution and deny the supreme legislative power of Arizona citizens to enact laws "independently of the legislature" under the state constitution.

Briefing on the case will be concluded by the end of December with a decision next year.

Air Quality Plan continued...

(Continued from page 2)

$\mu g/m^3$) that occurred over 25 days are excluded from the data as "exceptional events." If these exceedances were not excluded, 15 sites would be violating the standard by a significant measure.

In our Opening Brief, filed October 17th, we contend that the state's claim that the massive dust storms that caused most of the exceedances are not "reasonably preventable" ignores the fact that the sources of the dust, particularly agricultural sources, are not reasonably controlled.

We argue that the State should be working to achieve true attainment by adopting stringent control measures that would prevent or reduce the magnitude of the dust storms caused by seasonal high winds, and protect the public health.

THANK YOU

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CORPORATION COMMISSION'S STAFF RELEASES PROPOSAL TO REPEAL ENERGY EFFICIENCY STANDARD

The Arizona Corporation Commission's staff chose election day to release a sweeping proposal to undermine energy saving programs in Arizona. The proposal would basically repeal Arizona's energy efficiency standard, which requires utilities to achieve cumulative annual energy savings equivalent to at least 22% of retail electric energy sales by 2020. If enacted, this will effectively gut numerous energy savings programs that have been implemented for both residential and commercial customers throughout the state of Arizona since 2010 when the standards were adopted.

The Center has provided legal support to numerous groups that worked for many years on the standard before it was adopted by the Commission. Since then, the Center has provided support for implementation of the many beneficial programs and measures like energy efficient lighting that have been installed as a result of the rules.

It is undisputed that energy efficiency is the least expensive and cleanest resource in which a utility can invest. The less a utility needs to invest in new power plants, the more customers save. In 2013, Arizona Public Service and Tucson Electric Power customers conserved 645 million kilowatt hours of electricity through the company's efficiency programs thereby reducing their utility bills by about $77 million.

Arizona's energy efficiency standard is one of the most aggressive in the United States. It is one of the few areas in which Arizona leads in a good way.

The Center will continue to provide the necessary legal support to defend the rules from repeal.

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

If you support our work, please include us in your year-end giving.

Donate online, at our website, ***www.aclpi.org*** *or mail a check to ACLPI, 202 E. McDowell Rd., Ste 153, Phoenix AZ 85004.*