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THE CENTERLINE

ARIZONA SUPREME COURT UPHOLDS VOTER-MANDATED SCHOOL INFLATION FUNDING

On September 26, the Arizona Supreme Court issued its unanimous opinion holding that the legislature had violated the Voter Protection Act by failing to provide inflation funding to Arizona's public schools. Arizona voters had approved a measure referred by the legislature in 2000 that directed the legislature to annually increase school funding by the smaller of actual inflation or 2%. In 2010-2011 the legislature chose to inflate only a portion of the school funding formula. As a result, six school districts, the Arizona Education Association, the Arizona School Boards Association and several individuals filed a lawsuit to provide full inflation funding.

Although the Maricopa County Superior Court had ruled against the Plaintiffs, the Arizona Court of Appeals reversed that decision and held that the voter approved statute requires the legislature to provide for annual inflationary increases for the entire school funding formula. The Court also held that because the statute was enacted through a voter referendum, it was subject to the Voter Protection Act. The Voter Protection Act was approved by Arizona voters in 1998 and limits the legislature's authority to modify voter-approved measures. Under the VPA, the legislature cannot repeal an initiative or referred measure. Nor may it amend or supersede a voter approved law unless the legislation furthers the purposes of the law and is approved by a 3/4ths vote in each house of the legislature.

The state of Arizona appealed the Court of Appeal's decision to the Arizona Supreme Court and argued that voters did not have the authority to order it by statute to provide funding because it would be an unconstitutional restriction on the legislature's authority. The Supreme Court found the state's argument "flawed" because it failed to give meaning to the VPA. The Court determined that there was nothing in Arizona's Constitution that prevented voters from enacting the statutory directive and that it was therefore constitutional. In so holding, the Court upheld the Voter Protection Act as a limit on the legislature's authority.

For the 2014 fiscal year, the legislature had provided an additional $82 million in funding to public schools based on the Court of Appeals' decision. However, that appropriation failed to take into account the inflationary increases that should have been provided in the intervening years. Had the legislature made the appropriate calculation instead of skipping those years, the required amount would have been over $200 million that should have been provided to public schools.

The case will now go back to Maricopa County Superior Court where we will argue that it would be unfair to ignore the years for which inflationary funding should have been appropriated by the legislature. That would in effect allow the legislature to benefit from violating the law. It is important to set the funding level at the correct amount both retroactively and prospectively; otherwise, school districts will lose hundreds of millions of dollars in the years ahead.

The Center is co-counsel in this case with Don Peters at LaSota & Peters LLC who is lead counsel.

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LEGISLATURE'S ATTEMPT TO CHANGE JUDICIAL MERIT SELECTION REJECTED

Earlier this year, the legislature enacted House Bill 2600. That bill changed the Arizona Constitution's system for selecting judges by requiring that the Commission on Appellate Court Appointments submit at least five candidates to the Governor for consideration in the event of a judicial vacancy. The Arizona constitutional provision approved by voters in 1974 requires that a minimum of three names be submitted to the Governor.

If you thought the legislature could not change the Constitution, you'd be right. Four members of the Commission on Appellate Court Appointments filed an action in the Arizona Supreme Court challenging the legislation as unconstitutional. The petition they filed noted that Arizona voters had recently rejected a similar change in the 2012 election by a 3 to 1 margin. The legislature attempted to defend the change as merely making procedural changes but it is clear that the number of names submitted to the Governor is a significant substantive change to what the voters approved in 1974.

The Center filed an amicus brief on behalf of the Commissioners urging the Court to accept the case and rule in favor of the Commissioners. The Center noted that the whole idea behind the merit selection system for judges was to mitigate the impact of partisan politics. One way to do that is to establish a low minimum number of names that must be submitted to the Governor. Otherwise, the more names that are required to be submitted the greater likelihood that partisan politics is going to play a role in judicial selection.

On September 13, the Supreme Court issued its decision holding that House Bill 2600 conflicts with the Arizona Constitution and represents more than a mere procedural change to the nomination process. The Court said that the legislation "works a fundamental change in the constitutionally prescribed balance of power between the Commission and the Governor." The Court noted that by increasing the number of nominees that the Commission must submit, HB 2600 simultaneously increases the Governor's discretion and decreases the Commissioners' constitutional discretion to nominate no more than three candidates. And, of course, when a state statute conflicts with Arizona's Constitution, "the Constitution must prevail."

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LEGISLATURE VIOLATES CONSTITUTION ON HOMEOWNER ASSOCIATION LEGISLATION

In July, the Center filed a lawsuit on behalf of two individuals against the state of Arizona contending that the legislature had violated the single subject rule of the Arizona Constitution when it combined an elections bill with a bill relating to homeowners associations. The Plaintiffs in the case, George Staropoli and Bill Brown, are HOA advocates who earlier in the legislative session had worked to defeat the HOA legislation only to see it tacked on to the elections bill on the very last night of the legislative session.

The Arizona Constitution requires that every act passed by the legislature "embrace but one subject...which subject shall be expressed in the title..." If any subject is contained in an act which is not expressed in the title, the act is void only as to the provisions that are not described in the title. In this case, the legislation that was being considered on the last night of the session was an elections bill that addressed campaign finance provisions of state law. Representative Michelle Ugenti who had sponsored legislation earlier in the session covering homeowners associations was permitted to amend the elections law with the HOA law that had previously stalled. The result was Senate Bill 1454 the title of which said that it related to elections but which included the 65 page amendment relating to HOAs.

The HOA provisions in the bill were extensive. They included substantial provisions regarding the rental of property in a homeowners association, the display of political signs and provisions that allowed for representation of the HOA in small claims court by an officer or employee of the management company for the HOA. It is this last provision that the Plaintiffs were particularly concerned about because a party is not permitted to have a lawyer in small claims court but this change in the law would have allowed for representation of the HOA by its management company.

After the Center filed the lawsuit in July, the Attorney General's Office decided to enter into a consent order acknowledging that the HOA provisions of Senate Bill 1454 were unconstitutional. As a result, the Plaintiffs and the Attorney General's Office on behalf of the state filed a stipulation with Maricopa County Superior Court. The stipulation provides that Senate Bill 1454 violates the Constitution and that the portions of the bill that relate to planned communities and homeowner associations should be declared void and unenforceable. Maricopa County Superior Court Judge Randall Warner approved the stipulation and declared that the provisions of Senate Bill 1454 that relate to planned communities and homeowner associations are void and unenforceable. That order was entered on September 10, 2013, just three days before the legislation would have become effective.

Merit Selection continued

(Continued from page 2)

This was an important decision from the Court that preserves the integrity of the judicial merit selection system. The merit selection system has worked well for 40 years and is critical to the fair and impartial administration of justice in Arizona.

THANK YOU

The Center would like to thank **LEXIS-NEXIS** for its continuing grant of computerized legal research services.

COURT OF APPEALS STOPS NEW LAW ON CANDIDATE CONTRIBUTIONS

Earlier this year, the Arizona legislature decided that it was going to dramatically increase the amount of money that an individual could contribute to a candidate for statewide or legislative office. House Bill 2593 increased those limits from roughly $400 to $4,000 and, at the same time, repealed the aggregate amount an individual could contribute to privately funded candidates and political committees.

In late July, the Arizona Citizens Clean Elections Commission along with Louis Hoffman, the Chair of the Commission, Representative Victoria Steele and the Arizona Advocacy Network filed a lawsuit challenging HB 2593. The lawsuit sought an injunction against the implementation of HB 2593 on the grounds that the Clean Elections Act approved by Arizona voters in 1998 fixed the contribution limits and that HB 2593 did not amend those provisions. Additionally, even if HB 2593 was an attempt to change the limits set by the Clean Elections Act, it violated the Voter Protection Act which prohibits the legislature from amending or superseding a voter approved measure unless the amendment furthers the purposes of the act and is passed with a three fourths vote of the legislature. The Arizona Citizens Clean Elections Commission is represented in the case by the law firm Ballard Spahr LLP while Louis Hoffman, Representative Steele and the Arizona Advocacy Network are jointly represented by the law firm Osborn Maledon and the Center.

The President of the State Senate and the Speaker of the House of Representatives intervened in the lawsuit and denied that the Clean Elections Act had established contribution limits separate from the law actually amended by the legislature. The Act specified that the limits in effect in 1998 when the measure was approved were to be reduced by 20%. The Legislative Intervenors argued that the provision merely established a formula to adjust future changes to the contribution limits by the legislature. Under that theory, the legislature could increase the contribution limits as much as they wanted and the only effect of the Clean Elections Act would be to reduce that amount by 20%. The Legislative Intervenors also claimed that the legislature had to increase the contribution limits because they violate free speech provisions of the United State and Arizona Constitutions. Maricopa County Superior Court Judge Mark Brain agreed with the Legislative Intervenors in a September 11 ruling that denied our motion for a preliminary injunction. The Plaintiffs then filed a special action in the Arizona Court of Appeals seeking to reverse Judge Brain's ruling.

In October, the Arizona Court of Appeals reversed Judge Brain and issued a preliminary injunction against the implementation of HB 2593. That means that the old contribution limits will remain in effect pending the outcome of the litigation. The Court held that the provision in the Clean Elections Act wasn't just a formula but had independently set the campaign contribution limits. The Court noted that the voters' intent as expressed in the initiative was to limit campaign contributions so as to prevent improper influence over state and local elected officials and "to foster public confidence in the integrity of government." The Court recounted the corruption scandals that had rocked Arizona politics giving rise to the Clean Elections Act which was meant to diminish the influence of special interest money in Arizona elections.

The Court instructed the trial court to maintain the preliminary injunction that the Court of Appeals had granted pending a and remanded the case to the trial court to properly assess the First Amendment claims made by the Legislative Intervenors in determining whether a permanent injunction should be issued.

RAIL-VOLUTION 2013

Center staff attorney, Joy Herr-Cardillo, was fortunate to receive a scholarship to attend the 2013 Rail-Volution conference in Seattle, Washington this October. Rail-Volution is an annual event where transit supporters and advocates for alternative modes of transportation get together to discuss how smart transportation choices can create communities that are livable, equitable, and sustainable. The conference is hosted in a different city every year, and includes a variety of presentations and workshops. Attendees include transportation professionals, elected officials, and community activists.

The weekend before the conference started, Joy was able to attend a pre conference workshop on streetcars that included tours of the Portland Streetcar and United Streetcar, the Portland-based company that is currently manufacturing Tucson's streetcars. Once in Seattle, Joy attended a wide range of workshops that included how various communities have succeeded in getting voters to approve transit projects; the overwhelming success of bike share programs; how to create "complete streets" that foster a balance among bikes, transit, cars, trucks and pedestrians; and parking—how much is really necessary

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It was a wonderful opportunity to meet transit advocates from all over the country and to learn from the successes of other communities.

JUDGE REVERSES CORPORATION COMMISSION DECISION THAT BURNING GARBAGE IS RENEWABLE ENERGY

In July, Maricopa County Superior Court Judge Crane McClennen reversed a decision by the Arizona Corporation Commission that approved garbage incineration as a renewable energy source under the Commission's rules. The Center had filed a lawsuit challenging the Commission's decision on the grounds that the decision was contrary to the Commission's renewable energy standard rules. Those rules were adopted by the Commission in 2006 and require regulated Arizona utilities to provide a certain escalating percentage of their sales from renewable energy like solar or wind. The Commission's rules provide that by 2025, at least 15% of utility sales must come from renewable energy sources.

In this case, Mohave Electric Cooperative filed an application with the Commission in 2010 to approve a waste-to-energy project that would burn 500 tons of garbage each day designated as either a pilot project under the renewable energy rules or waiving the rules altogether so that the electricity produced would meet the requirements of the rule. The project was proposed to be built near Surprise, Arizona and would burn municipal solid waste collected from Glendale, Avondale and surrounding areas. The project was not economically feasible unless the electricity produced was regarded as renewable energy which has more value because of the renewable enery requirements in the Commission's rules.

In the Commission's 2012 decision, the Commission determined that burning garbage had enough characteristics similar to electricity produced by solar and wind facilities that it should qualify under the rules. That is so despite the fact that when the rules were originally adopted in 2006, the incineration of municipal solid waste was specifically discussed and rejected by the Commission as renewable energy. Alternatively, the Commission decided that 90% of the electricity produced by burning garbage would come from biogenic sources and that therefore 90% of the electricity should be counted as renewable. The problem is that there was no credible evidence to support that conclusion.

In vacating the Commission's decision, Judge McClennen ruled that the Commission erred as a matter of law and abused its discretion in approving the project as renewable energy. Judge McClennen's decision preserves the integrity of the renewable energy rules and hopefully will put the brakes on any future garbage incineration projects that want to masquerade as renewable energy.

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