The Arizona Center for Law in the Public Interest
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THE CENTERLINE

SCHOOL FUNDING CASE RETURNS TO TRIAL COURT

Last September, the Arizona Supreme Court held that the legislature violated the Voter Protection Act by failing to provide inflation funding for K-12 public schools. Arizona voters had approved a measure in 2000 requiring the legislature to annually inflate education funding by 2% or the actual rate of inflation, whichever is lower. The legislature followed that directive from the voters until 2009 when it decided to ignore the law. It took that position based on its belief that the voters could not tell it what to do when it came to appropriating funds.

However, once the courts ruled that the legislature must follow the law, the legislature decided that it would inflate education funding but that it would start from the lower amount in 2009-10 when it stopped the funding. That approach will always leave schools five years behind. Instead, the legislature should have calculated what the appropriate funding level would have been had it followed the law during those years.

The legislature's approach yielded only $82 million in inflation funding for this fiscal year. Had it calculated the amount appropriately and applied inflation to the five years it failed to provide funding, the amount would have been $330 million leaving public schools $248 million short this fiscal year. The deficiency will grow each year the legislature fails to calculate the amount correctly. And, of course, the legislature takes the position that it doesn't have to backfill any of the funding that the law required it to provide for the previous five years. Had the legislature followed the law, it would have provided an additional $1.3 billion to public schools over the previous five years.

The Arizona Supreme Court remanded the case back to the Maricopa County Superior Court for further proceedings consistent with its opinion. We have filed a memorandum with the trial court spelling out what needs to be done in order to make school districts whole because of the legislature's failure to follow the law. The state and the President of the Senate and Speaker of the House have asserted numerous defenses as to why they shouldn't have to do anything. First, they claim that the relief we are seeking exceeds the scope of the Supreme Court's remand to the trial court and that, in any event, the trial court lacks authority to provide the requested relief. Second, they claim that the school districts would have to file a notice of claim with the state which would only allow for relief going back one year. They also maintain that all school districts would have to make the claim and pursue relief as a class in a separate court action. Finally, the legislature claims that any amount owed school districts should be offset by other education funding it provided during the five years it violated the law.

In effect, the state and legislature are claiming that they can violate the law and that there are absolutely no consequences for doing so. This approach means that anytime the state and legislature choose to litigate claims like this, the longer the litigation takes the more money the state saves for itself at the expense of children in public schools.

Hopefully the judge will reject any notion that the legislature can escape its lawful responsibility to fund public education by litigating its liability for as long as possible. We're currently in the process of briefing these issues. Maricopa County Superior Court Judge Katherine Cooper has scheduled a hearing to consider the issues on May 9. The Center is co-counsel in this case with Don Peters at LaSota and Peters LLC who is lead counsel.

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The Centerline is a quarterly newsletter published by the Arizona Center for Law in the Public Interest.

The Center keeps up the fight for truly Clean Air; not "attainment" by loophole!

On February 6, 2014, the Environmental Protection Agency (EPA) published a Notice in the Federal Register announcing that it was proposing to approve the State of Arizona's revised State Implementation Plan (SIP) for particulate matter (PM-10) even though numerous monitors throughout the nonattainment area were continuing exceed the national standard for PM-10. You might be thinking, "That can't possibly be true?" Sad to say, it is true. So how does something like this happen? By engaging in the regulatory equivalent of plugging your ears and singing "la la la, I can't hear you!"

In its proposal to approve the SIP and find that the Phoenix area has "attained" the national ambient air quality standard for PM-10, EPA has proposed to treat 131 exceedances of the PM-10 standard as high wind "exceptional events." That means that these exceedances are simply excluded from the data considered. As we set forth in an official comment letter submitted on March 10, 2014, we believe that EPA's proposal to exempt 131 exceedances that occurred over 25 days is unconscionable, and by excluding the data, EPA and the Arizona Department of Environmental Quality (ADEQ), which submitted the exceptional event demonstrations, misrepresent the extent of the particulate pollution in the Phoenix area to the grave detriment of public health. If these exceedances are not excluded, 14 of the 16 monitoring sites that reported exceedances in 2011 and 2012 would be violating the standard by a significant measure. Moreover, 45 of the exceedances that EPA has proposed to exclude are greater than the threshold that EPA has identified as "severe" in its own policy documents.

In our comment letter, we also strenuously objected to EPA's proposal to approve the attainment demonstration and find that the area reached attainment by December 2012 when the exceedances continued into 2013. As EPA acknowledged in its proposed rulemaking, the Phoenix area experienced thirty exceedances over 6 days in 2013. ADEQ has flagged those exceedances and is currently in the process of preparing exceptional events demonstrations for each of them. We asserted that EPA's proposal to find the area in attainment and simply assume that it will concur in these 2013 demonstrations is unsupportable, particularly in light of the failure of EPA to require any mitigation measures to prevent or minimize future high wind events.

For citizens who have to suffer the health and safety consequences of these recurring, predictable and preventable high wind events, it is inexcusable for ADEQ, with EPA's approval, to abuse the exceptional events rule

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THE SUPREME COURT APPROVES PUBLIC FUNDING FOR PRIVATE SCHOOLS

On March 21, the Arizona Supreme Court declined to review a Court of Appeals' decision that rejected our constitutional challenges to Arizona's Empowerment Scholarship Accounts. The Supreme Court's inaction will pave the way for a significant expansion of legislative programs that appropriate public funds for tuition at private schools.

The case started in 2011 when the legislature passed Senate Bill 1553 to provide education scholarships to students with disabilities. The purpose of the ESA was to provide "options" for the education of students in Arizona. To qualify, a student must have a recognized disability, and have either attended a public school in the previous year or been the recipient of a scholarship from either a tuition school organization or the ESA. The qualifying student can receive a scholarship equal to 90% of the base support level that otherwise would be provided for state education of the student.

The parent may then apply the scholarship funds to one or more of eleven permissible uses including tuition or fees at a private school, textbooks, curriculum and others. It's not a surprise that the bulk of funding for ESAs is spent on tuition at private schools.

The Center along with our co-counsel Don Peters at LaSota and Peters LLC argued that the ESAs violate two provisions of the Arizona Constitution. First, the ESAs violate the Aid Clause of the Constitution that prohibits the "appropriation of public money made in aid of any church, or private or sectarian school..." The Court of Appeals rejected that argument saying that the specified object of the ESA is the beneficiary families not the private or sectarian schools themselves.

Second, we argued that the ESAs violate the Religion Clause in the state constitution. That clause prohibits the appropriation of any public money "for or applied to any religious worship, exercise or instruction, or to the support of any religious establishment." There is no question but that ESA funds have been used to pay for tuition at sectarian schools. The Court of Appeals decided that because the ESA does not result in an appropriation of public money to encourage the preference of one religion or another, it passed constitutional muster. According to the Court, any aid to religious schools would be a result of the genuine and independent private choices of the parents.

The Court of Appeals ruling left intact by the Supreme Court means that public funds will now be used to pay for religious instruction at sectarian schools. The legislature has already expanded eligibility for the programs to include foster children, children with parents on active duty in the military as well as children attending schools given a "D" or "F" grade by the state. Emboldened by the Court's rulings, the legislature is considering even more expansions. That means that Arizona taxpayers join 14 other states that will bankroll nearly $1 billion this year in tuition for private schools including hundreds of religious schools that teach "creationism science" and how people lived alongside the dinosaurs. Aside from being contrary to the express language of the Arizona Constitution, it's hard to believe that the progressive framers of that Constitution could have intended such a result.

Clean Air continued

(Continued from page 2)

to avoid addressing the serious problem of PM-10 pollution. Particulate pollution has plagued the Phoenix metropolitan area since the 1970s and continues to do so today, despite the regulatory agencies' claim that Phoenix has now "attained" the PM-10 NAAQS. We will be among the first to applaud true attainment of the 24 hour standard if and when the area ever achieves it, but declaring the area in "attainment" because ADEQ has figured out a way to ignore the frequent and severe violations of the standard at multiple monitors, many of which are located in low income neighborhoods, is no cause for celebration.

The Center is Celebrating its 40th Anniversary!

This year, at the Center's annual event we will be celebrating its 40th Anniversary. In November of 1974 when Bruce Meyerson and Herb Ely decided to create a nonprofit law firm to hold government accountable and fight corporate abuse, an initial group of Center supporters scraped together $700 to pay Meyerson's salary for six weeks and a local firm donated a one room office. That turned out to be just enough to leverage forty years of public interest litigation that has improved the lives of millions of Arizonans. No one could have predicted that the Center would still be an important force for justice in Arizona 40 years after the organization began with nothing more than a desk, a phone and a typewriter with only one young lawyer to type on it.

The celebration will be held on Saturday, May 10th in the Central Courtyard of Heard Museum from 6:00 p.m. to 10:00 p.m. Once again, we will have a hosted bar and food from Arizona Taste. Instead of a sit down dinner, we will have passed hors d'oeuvres and elegant food stations set up throughout the courtyard. There will be live music and, of course, we will once again have our auctions. Last year's silent auction featured over 100 items, ranging from original artwork to one-of-a-kind jewelry pieces. Guests also bid on wines from all over the world, musical instruments, and golf outings.

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This year's live auction will once again feature fabulous vacation packages. To see pictures of some of the auction items that will be up for bid, check out our website at www.aclpi.org. We plan to keep updating the website as the event gets closer and exciting auction items are donated.

We will also be presenting our Public Interest Award to Congressman Ed Pastor in recognition of his many years of public service representing Arizona in the United States Congress. According to Tim Hogan, "the Center Board and staff all agreed that recognizing Representative Pastor, who entered public service himself in the 1970s, was particularly appropriate on this special anniversary ."

This is the Center's only fundraising event of the year in the Phoenix area, so please make every effort to attend and join the fun. Tickets are $150 each and are available online or by contacting the Center at (602) 258-8850. If you would like to attend but the ticket price is too steep, please let us know. We often have a limited number of tickets available at no cost.

Also, let us know if you have something that you can donate for the silent and/or live auction. Popular items include frequent flier miles, vacation timeshares, sporting event tickets, sports memorabilia, wine, jewelry, or gift certificates. We hope to see you there!

We hope you can join us to
Celebrate our
40th Anniversary

Saturday May 10, 2014
Heard Museum
2301 N. Central Avenue
Phoenix, Arizona

We will be presenting our Public Interest Award To Congressman Ed Pastor

Center's Longest Running Case—*Arnold v. Sarn*—Comes to a Close

In early January, 2014, the Center announced a final resolution of *Arnold v. Sarn*, the historic class action, filed in 1981,which required the State of Arizona and Maricopa County to develop a full continuum of community mental health services to ensure that individuals with serious mental illness can live successfully in their community. The settlement agreement entered into by the Center, Governor Brewer and the Arizona Department of Health Services will significantly enhance the quality of and expand the capacity for community-based mental health services for thousands of people with mental illness, and provide for the termination of the long standing litigation.

Center Staff Attorney Anne Ronan, Plaintiff Charles "Chick" Arnold and Judge Bassett at reception hosted by Osborn Maledon to celebrate the landmark settlement.

Anne Ronan, attorney for the Plaintiff class stated that "the parties worked diligently for months on the terms of this agreement. From the outset we were optimistic that with the inclusion of most Class Members in the AHCCCS program beginning in 2014, and the Governor's long standing commitment to persons with serious mental illness, this was the appropriate time to seriously discuss terms for ending the litigation."

While the litigation will end, the settlement creates ongoing enforceable obligations on the State and the County to continue to develop community mental health services to meet the needs of the expanding population and to ensure those services meet national quality standards. An independent entity will perform quality service reviews on an ongoing basis and the assessment of the system service capacity will also be completed by an independent entity. These independent reviews will be publicly available allowing for the community to monitor both the capacity and the quality of the system. The increase in capacity will not just mean more of the same but improved services recognized nationally as effective.

The services included in the settlement are proven, cost-effective measures that lead to recovery and the ability of people with serious mental illness to live successful and fulfilling lives in the community. Under the proposed Settlement Agreement, over the next two years Arizona will significantly increase its capacity for supported housing to include a minimum of 1200 additional supported housing units, add "Assertive Community Treatment" to serve 800 people, and significantly expand supported employment programs, creating opportunities for individuals to join the workforce, engage in productive activities, and improve the quality of their lives. The agreement also provides for an increase in peer and family support services. Further, the Agreement calls for an independent entity to assess the needs for additional services in the following years.

Judge Edward Bassett approved the Agreement on February 27, 2014. Judge Bassett found that it provided a substantial benefit to class members through increased services and an evidence based system for evaluating quality and quantity of services. Governor Brewer personally attended the hearing and spoke in support of the Agreement.

ACLPI
ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

dedicated to ensuring government accountability and protecting the legal rights of Arizonans

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