

CENTER FILES SUIT TO STOP LEGISLATURE'S RAID ON MORTGAGE FORECLOSURE SETTLEMENT

On May 24, 2012, the Arizona Center for Law in the Public Interest, along with the Morris Institute of Justice, filed a lawsuit challenging the legislature's sweep of \$50 million from the Court Ordered Trust Fund set up to benefit Arizonans hurt by the foreclosure crisis as part of the National Mortgage Foreclosure Settlement.

Arizona currently has the highest foreclosure rate in the country. In March 2012, there were 9,497 foreclosure filings, the equivalent of 1 in every 300 housing units. Arizona, along with Nevada, has the highest rate of distressed property transactions in the country.

In response to this crisis, the Arizona Attorney General, Tom Horne, joined with attorneys general from forty-eight other states and the United States government to bring a civil action against Ally/GMAC Mortgage, Bank of America, CitiMortgage, JP Morgan Chase and Wells Fargo, the five largest loan servicers in the United States. The

plaintiffs in that litigation filed a complaint in federal district court in the District of Columbia that alleged that the defendants had violated numerous federal and state laws in the manner in which they originated and serviced single family residential mortgages.

Shortly after the action was filed, a national settlement was successfully negotiated by the parties and on April 4, 2012, a Consent Judgment that memorialized and documented the terms of that settlement was entered by the district court.

Under the Consent Judgment, the Arizona Attorney General was to receive \$97,784,204 in settlement funds. The Consent Judgment sets forth the allowable uses of these settlement funds and states that the Attorney General as trustee "shall" deposit the funds with the State Treasurer and the funds "shall" be held in a separate "Court Ordered Trust Fund." That didn't stop the Arizona legislature, however, which decided that it would raid the trust fund in an effort to balance its budget.

On May 1, 2012, the Arizona Legislature passed its budget bill for fiscal year 2012, which Governor Brewer signed on May 7, 2012. That budget bill directed the Attorney General to transfer \$50 million from the Court Ordered Trust Fund to the state's general fund.

The lawsuit seeks to stop that transfer on several grounds, including breach of trust. The matter is currently pending before Judge Brain in Maricopa County Superior Court. Shortly after the lawsuit was filed, the defendants stipulated that no funds would be transferred to the general fund before December 2012, thereby giving the parties sufficient time to brief and argue the case.

A hearing on the plaintiffs' Motion for Injunctive Relief is set for August 23, 2012. Copies of the Complaint and the moving papers supporting the plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction are available on the Center's website, www.aclpi.org.

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Landmark Agreement Reached in Mental Health Care Case

At a press conference on May 17, 2012, Governor Jan Brewer announced a proposed Agreement in the Arnold v. Sarn case regarding State-supported care and services for individuals with Serious Mental Illness. The agreement, which has been approved by the Court, will last two years. During that time, the State and plaintiffs will build upon the accepted framework for services and recovery.

The Parties worked for months to reach an agreement to define the services, supports and benefits that must be provided to the Plaintiff class and the measurement of compliance in order for Defendants to exit the case. Due to the continued uncertainty of the State revenues, as well as the unknown impact of the changes made to the federal Medicaid program by the Affordable Care Act to fund necessary services to the Class Members, the Parties have agreed to an interim two year agreement that will focus on the development of specific community based services for Class Members going forward.

The services agreed to by the Parties include: Mobile Crisis Services; Supported Employment, Case Management, Assertive Community Treatment Teams, Family and Peer Support, Supported Housing, Living

Skills Training, Health Promotion, Personal Assistance, Respite, and Medication services. In addition, the Agreement provides that the Defendants will adopt nationally recognized standards for community based services endorsed by the Substance Abuse and Mental Health Services Administration ("SAMHSA") and incorporate those standards into the next Maricopa County Regional Behavioral Health Authority ("RBHA") contract for services to the class.

The recently approved budget increase of \$38.7 million dollars statewide championed by Governor Brewer will significantly increase these services in the first year of this Agreement. The Agreement defers the discussion of exit criteria for one year and envisions further court orders at its expiration on July 1, 2014

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SUPREME COURT AFFIRMS ORDER TO SECRETARY OF STATE TO PUT THE QUALITY EDUCATION AND JOBS INITIATIVE ON THE BALLOT

On August 14, the Supreme Court by a panel consisting of Chief Justice Berch, Vice Chief Justice Bales and Justice Brutinel affirmed a lower court's ruling that Secretary of State Ken Bennett is required to put the Quality Education and Jobs Initiative on the November ballot.

The Quality Education and Jobs Initiative would extend the temporary one cent sales tax that was approved by voters in 2010 to help keep education funding from being cut at a time the state was experiencing substantial budget deficits. The temporary sales tax is scheduled to expire in 2013. The Quality Education and Jobs Initiative will renew the tax when it expires and provide permanent dedicated revenue for education that the legislature will not be able to cut. The Initiative, denominated Proposition 204, will support education across the spectrum: K-12, charter schools, vocational education, community colleges, universities and GED programs.

Proponents of the initiative had mistakenly submitted to the Secretary of State two different versions of the proposed law: their intended version on a compact disc and a paper copy that omitted 15 lines of text on the 12th of

15 pages. The proponents circulated petitions attached to the version of the proposed law contained on the compact disc, obtained more than 290,000 signatures to place the initiative on the November ballot and tendered the signatures to the Secretary of State to be validated. The Secretary of State refused because the text of the initiative attached to the petitions actually signed by voters did not identically match the paper copy submitted to his office.

In the lower court, Judge Robert Oberbillig ordered Bennett to place the measure on

the ballot wondering "why we need to be here." The Supreme Court affirmed that order stating that the proponents had substantially complied with the statutory requirement that an application for an initiative "set forth...the text of the proposed law."

The Center co-counseled this case with Board Member and former Supreme Court Justice Stanley Feldman who was lead counsel on the case. We are pleased to have been a part of the effort to make sure that Arizona voters get a chance to guarantee that their tax dollars will support a quality education for every student in this state.

SUPREME COURT ACCEPTS REVIEW IN *RUMERY V. BAIER*

The Arizona Supreme Court granted the Petition for Review filed by the State Land Commissioner in the *Rumery v. Baier* case. In early 2010, the Center filed this lawsuit on behalf of two school teachers and the Cartwright Elementary School District to challenge the legislature's attempt to allow up to 10% of state trust land proceeds - \$10 million per year - to be used for administrative costs of running the State Land Department. Superior Court Judge Gary Donahoe agreed with the

Center and ruled that the legislation violated the Arizona Constitution. The Court of Appeals affirmed that decision on November 10, 2011; however, the Commissioner filed a Petition for Review, which the Supreme Court granted at the end of May. The Commissioner recruited numerous amici, including the Governor and, inexplicably, the Superintendent of Public Instruction, to file briefs supporting her Petition for Review. The matter is scheduled for oral argument on October 10, 2012.



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