



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310**

CV-02-0215-PR

STEVE MAY v. HON. COLLEEN A. McNALLY, BETSEY BAYLESS; CAROL SPRINGER; CITIZENS CLEAN ELECTIONS COMMISSION; and ARIZONANS FOR CLEAN ELECTIONS, Real Parties.

Parties and Counsel:

Petitioners: Real Party in Interest Arizonans for Clean Elections (“ACE”), represented by Timothy M. Hogan, Arizona Center for Law in the Public Interest, and Elizabeth B. Daniel, Brennan Center for Justice, and Real Party Citizens Clean Elections Commission (“CCEC”), represented by Assistant Attorneys General Kathleen P. Sweeney and Todd F. Lang.

Respondent: Steve May, represented by Clint Bolick, Timothy D. Keller and Thomas P. Liddy, Institute for Justice Arizona Chapter, and William H. Mellor and Scott G. Bullock, Institute for Justice.

Amicus: Pacific Legal Foundation, represented by Deborah J. La Fetra.

Facts:

State Representative Steve May was fined for violating a civil parking ordinance. On top of his \$27 fine, among other surcharges, appeared a ten percent surcharge to support Clean Elections under Arizona Revised Statutes (A.R.S.) section 16-954(C), which he refused to pay. He and Rick Lavis, a lobbyist who had been assessed a \$100 fee under the Citizens Clean Elections Act, challenged the constitutionality of the Act as violating their free speech rights. The federal court dismissed for lack of subject matter jurisdiction under the Tax Injunction Act (a federal statute) because it determined that this was an action challenging a state tax. Lavis and May then sought declaratory and injunctive relief in superior court. Judge McNally held the lobbyist fee was unconstitutional, and severed that provision of the Act; she upheld the surcharge on civil and criminal fines. May petitioned this court for special action relief. On March 19, 2002 the Court declined to accept jurisdiction. May then filed his petition in the Court of Appeals.

The Court of Appeals issued an opinion on June 17, reversing the trial court and finding A.R.S. section 16-954© an unconstitutional restraint on the exercise of free speech. May filed a petition for special action protesting the Court of Appeals' decision to stay implementation of its opinion until July 8; ACE cross-petitioned for a stay of implementation. This Court ordered on July 3 that the decision be stayed until further order of this Court.

Issues:

ACE: “Arizonans for Clean Elections, ... the official proponent of the Citizens Clean Elections Act ballot initiative, requests that the Arizona Supreme Court review and reverse the Court of Appeals' decision issued in this matter... [i.e.,] that the imposition of a 10% surcharge on civil and criminal fines to fund participating candidates under the Arizona Clean Elections Act is unconstitutional.”

CCEC: “1. Did the court of appeals err by deciding that the clean elections surcharge was more akin to a regulatory fee than to a general tax that would have been constitutional under *Buckley*?

“2. If the cases concerning compelled funding of speech are at all germane here, did the court of appeals err by applying the principles that govern *Abood*, *Keller*, and *United Foods* rather than those that govern *Southworth*?”

Definitions:

Amicus: amicus curiae, Latin for “friend of the court.” Someone without a direct stake in the outcome of this case, but who is concerned with, or knowledgeable about, the area of law it touches on.

Declaratory relief: a court’s decision of what the law is.

Injunctive relief: a court decision that prevents another party from acting in a way the plaintiff wants prevented.

Sever: remove from the rest of a larger body; here, part of the Act was unconstitutional, but the rest could function without that part and remained enforceable afterwards.

Special action: besides a direct appeal or petition for review, a method of petitioning (asking) a court look at the action of an administrative agency or a lower court. Whether to decide a special action on its merits is up to the court.

Stay:

order by a court to delay or to stop an action, for a time.

Subject matter jurisdiction:

authority for a court to act by deciding a case. Here, the federal court did not have subject matter jurisdiction because its statute and the relationship between the federal and state governments give it no power to address the validity of state taxes.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.

August 8, 2002

