



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



JOHN KROMKO, RACHEL WILSON, ADRIAN DURAN and SAM BROWN v. ARIZONA BOARD OF REGENTS and STATE OF ARIZONA,
1 CA-CV 04-0250 (Opinion); **Supreme Court No. CV-07-0018-PR**

PARTIES AND COUNSEL:

Petitioners: The Arizona Board of Regents (“the Board”) and the State, by Solicitor General Mary O’Grady and Assistant Attorneys General Paula S. Bickett, Bruce L. Skolnik and Daniel P. Schaack.

Respondents: John Kromko, Rachel Wilson, Adrian Duran and Sam Brown (“plaintiffs” or “students”), represented by Paul Gattone, Payson & Gattone.

FACTS:

In March 2003, the Board approved a 39.1% tuition increase for state university students. Legislative appropriations to the universities were level from 2003 to 2004. The students filed a complaint for declaratory and injunctive relief, alleging the Board’s decision to raise tuition violated Article 11, § 6 of the Arizona Constitution¹ and the Legislature’s failure to increase funding for the university system violated Art. 11, § 10.² They claimed the Board increased tuition to unaffordable levels without financial analysis and based on the university presidents’ arbitrary dollar requests. They also alleged the Board improperly justified the increase as needed to pay off debt for construction and to fund need-based financial aid. Before the increase, tuition in Arizona was the lowest nationally; after the increase, it was eighth lowest.

The State moved to dismiss the complaint, alleging that the Legislature in appropriating for university education and the Board in setting tuition were immune from suit, because those decisions required the determination of fundamental government policy in which courts should not interfere. The students countered that their claim was “merely the higher education counterpart of the school financing litigation that led to ... *Roosevelt Elem. Sch. Dist. No. 66 v. Bishop*,” 179 Ariz. 233 (1994). The trial court dismissed the complaint because in a challenge to the outcome of their decisions, the Board and Legislature were immune from suit.

1 “The University and all other State educational institutions shall be as nearly free as possible.”

2 It provides in part that “the legislature shall make such appropriations, to be met by taxation, as shall ensure the proper maintenance of all state educational institutions, and shall make such special appropriations as shall provide for their development and improvement.”

ISSUES:

“1) Did the Majority err in deciding that the Board’s discretionary decisions to increase tuition are subject to judicial review when (a) those decisions implicate political questions that require the exercise of self-imposed judicial restraint and (b) such restraint is necessary to promote the policy underlying legislative immunity?

“2) Even if the Board’s decision to increase tuition is subject to judicial review, did the Majority erroneously conclude that Plaintiffs had sufficiently alleged facts that, if proven, would show that the Board had exceeded its broad discretion to set tuition?”

DEFINITIONS:

complaint for declaratory and injunctive relief: document initiating a legal action in a trial court by which the plaintiff requests an order from the court stating that the plaintiff’s take on the law is legally correct, and that defendant must stop doing whatever it has done contrary to that view.

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