



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA EARLY CHILDHOOD DEVELOPMENT & HEALTH  
BOARD v. JANICE K. BREWER; DEAN MARTIN; and D.  
CLARK PARTRIDGE,  
CV-09-0078-SA**

**PARTIES AND COUNSEL:**

*Petitioner:* Arizona Early Childhood Development & Health Board (“Board”), represented by Paul F. Eckstein, Charles A. Blanchard, Rhonda L. Barnes and Steven J. Monde, Perkins Coie Brown & Bain.

*Respondents:* Arizona Governor Brewer, Treasurer Martin and Comptroller Partridge, represented by Solicitor General Mary O’Grady and Assistant A.G. Christopher Munns. Speaker of the House Kirk D. Adams, represented by Peter A. Gentala, and Senate President Robert L. Burns, represented by Gregory G. Jernigan.

**FACTS:**

In 2006, voters passed Proposition 203, establishing a system to create and promote early childhood development and health programs. It created the Board to coordinate regional councils, which would develop programs. A.R.S. § 8-1161, A.R.S. § 8-1171, A.R.S. § 8-1191. It increased tobacco taxes and directed deposit of revenues from the new tax into an Early Childhood Development Fund (“Fund”). The Fund contains five separate accounts for the program, administrative costs, private gifts, grant monies and legislative appropriations. A.R.S. § 8-1181(B). Ninety percent of designated tobacco revenues must be deposited in the program account; ten percent goes into the administrative costs account. A.R.S. § 8-1181(D). The Board may transfer money from the administrative costs account to the program account, but not the other way. *Id.* The Board may invest unexpended monies in the Fund and interest the investment earns is credited to the generating account, “except as other wise (sic) provided by law.” A.R.S. § 8-1181(E).

On January 31, 2009, to balance the state budget the Legislature enacted by simple majority “the Interest Transfer” or “Funds Sweep” as part of legislation that transferred money from several funds into the general fund and also cut agencies’ appropriations. 2009 Ariz. Session Laws, ch. 1, 1<sup>st</sup> Spec. Sess. (SB 1001). Section 11 transferred \$7 million in interest income from the Fund into the state’s general fund on the bill’s effective date. On February 4 the Board initially submitted paperwork agreeing to the transfer, but then asked for it back. On February 29, the Board sent a letter to the governor, the speaker of the House and the Senate president objecting to the transfer provision as a violation of voter protection provisions of Arizona Constitution, article IV, part 1, §§ 1(6)(C) and (D).

On March 30, the Board filed this special action challenging Section 11, seeking a determination that the Interest Transfer is unconstitutional because (1) it appropriates or diverts funds created for a specific purpose by Proposition 203 but does not further the initiative's purposes and was not approved by a three-fourths vote of both houses of the legislature under Article 4, Part 1, Section 1(6)(D) of the Arizona Constitution; and (2) it amends Proposition 203 without furthering its purposes or by a vote of three-fourths of both houses as required by Article 4, Part 1, Section 1(6)(C) of the Arizona Constitution. The Board seeks an order declaring it unconstitutional and prohibiting Martin and Partridge from receiving, collecting or demanding payment of S.B. 1001's \$7,000,000 sweep against the Fund, and prohibiting the governor from expending monies received or collected under the sweep or executing that section of S.B. 1001.

**ISSUE:**

The Arizona Constitution requires any legislative act amending an initiative measure, or diverting funds created or allocated to a specific purpose by an initiative measure, to further the purposes of the initiative measure and be approved by a three-fourths vote of the legislature. The issue presented is whether the Section 11 Funds Sweep, which diverts \$7 million from the Fund to the state general fund and amends Proposition 203, is invalid legislation because it was approved by a simple majority vote of the legislature and does not further the purposes of Proposition 203 in violation of Article 4, Part 1, Section 1(6)(C) and (D) of the Arizona Constitution.

**Definitions:**

A.R.S. § xx-xxx            Arizona Revised Statutes section (followed by title-number), the statutes enacted by Arizona's Legislature.

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