



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DAVID WELCH v. COCHISE CNTY. BD. OF SUPERVISORS
CV-20-0322-PR**

PARTIES:

Petitioners/Defendants: Cochise County Board of Supervisors, Patrick G. Call, Ann English, and Peggy Judd (collectively, “the Board”)

Respondent/Plaintiff: David Welch (“Welch”)

FACTS:

The Board’s Actions. In February 2019, the Board learned that the Justice of the Peace for Justice Precinct 5 would be resigning from his position. In response, the Board posted a public notice for a special meeting on February 12, along with a possible executive session. The meeting’s agenda listed two items: (1) “Discussion regarding the process for filling the vacancy for Justice of the Peace in Justice Precinct 5”; and (2) “Appoint _____ as Justice of the Peace for Justice Precinct 5.”

The meeting started as scheduled at 9:30 a.m. on February 12. The Board discussed the process for filling the justice-of-the-peace position, and rejected the idea of an application process or a committee-driven process. In lieu of such a procedure, the County Administrator recommended a simple, direct appointment. At that point, the Board went into executive session. It came out of executive session about a half-hour later, and, when it returned, it voted unanimously to table the matter and to recess until 11:30 a.m.

The Board did not reconvene until around 12:30 p.m. When the meeting resumed, Supervisor English promptly moved to appoint Supervisor Call to fill the vacant justice-of-the-peace position. After brief remarks by Supervisors English and Judd, the Board appointed Call to the position by a 2-0 vote, with Call abstaining.

Welch’s Lawsuit. Two days after the meeting, Welch sued the Board in superior court in a special action, alleging that Call’s appointment violated Arizona’s open-meeting laws (A.R.S. §§ 38-431.01 to -431.09) and involved a statutorily prohibited conflict-of-interest (A.R.S. § 38-503). In early March 2019, the Board published a notice stating its intent to hold a meeting to ratify the February 12, 2019 appointment under A.R.S. § 38-431.05. On March 14, the Board held the meeting and voted to ratify Call’s appointment as a justice of the peace.

On March 22, 2019, the Board filed a motion to dismiss Welch’s action for lack of standing and failure to state a claim. The court granted the motion. Among other things, the court ruled that Welch lacked standing to seek declaratory or injunctive relief because he failed to show “distinct and palpable injury or particularized harm.” It further ruled that “without a showing of a particularized harm or distinct injury, bringing an action under the status as a taxpaying citizen does not confer standing to bring an action for Declaratory Action or Injunctive Relief.” It also held that Welch’s complaint failed to state a claim, ruling that the Board “cured any issue of open meeting laws improprieties at the March 14, 2019 ratification meeting.” Welch then appealed.

The Court of Appeals' Opinion. The Court of Appeals reversed. It turned first to whether Welch had standing under the open meeting laws to challenge the Board's actions. It noted that Section 38-431.07(A) of the open-meeting laws provides standing to "[a]ny person affected by an alleged violation." It explained that it was not aware of any case interpreting this provision, but noted that "this court has determined that taxpayers have qualified standing under similar language in A.R.S. § 12-1832, an enforcement provision of the Uniform Declaratory Judgments Act that provides standing to "[a]ny person . . . whose rights . . . are affected by a statute."

It explained that in *Dail v. City of Phoenix*, 128 Ariz. 199, 202-03 (App. 1980), "[w]e concluded that a taxpayer would have standing under § 12-1832 to challenge an illegal expenditure of public funds if the funds were raised through taxation." It indicated that "[w]e reasoned that such standing would exist based on the taxpayer's 'liability to replenish the public treasury for the deficiency which would be caused by the misappropriation.'" (Quoting *Ethington v. Wright*, 66 Ariz. 382, 386 (1948).) Based on *Dail* and related policy considerations, the court concluded that "a citizen taxpayer is a 'person affected by' expenditures of public funds arising from violations of open-meeting laws." As such, the court concluded that Welch had standing because the appointment of a justice of the peace involved an expenditure of public funds raised through taxes. Based on similar reasoning, the court also held that Welch had taxpayer standing under the conflict-of-interest statute, which provides in A.R.S. § 38-506(B) that "[a]ny person affected by" a public agency's decision may sue to enforce the statute.

Last, the court rejected the Board's argument that it cured any alleged open-meeting violation under A.R.S. § 38-431.05 when it ratified its decision to appoint Call. It explained that "ratification merely provides a way to ensure the effectiveness of decisions by negating the consequence that a decision at an improper meeting is null and void." It noted that "[n]othing in the ratification provisions suggests that ratification negates an open-meeting violation in any other way." As such, the court concluded that "ratification does not preclude possible sanctions" under A.R.S. § 38-431.07(A) and consequently "the trial court erred in dismissing Welch's claims for sanctions."

ISSUES:

The petitioners have asked the Supreme Court to address two issues:

- (1) "Is citizen or taxpayer status, alone, sufficient for a private claimant to be 'affected by' an alleged statutory conflict of interest or open meeting law violation such that standing to sue is conferred?"
- (2) "Does statutory ratification moot a private claimant's open meeting law challenge to a governmental decision that was effectively ratified in accordance with Arizona's open meeting laws?"

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