



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA FREE ENTERPRISE CLUB et al. v. KATIE HOBBS et al.  
CV-21-0304-AP/EL**

**PARTIES:**

**Plaintiffs/Appellants:** Arizona Free Enterprise Club, et al.

**Defendant/Appellee:** Katie Hobbs, in her capacity as the Secretary of State of Arizona

**Real Party in Interest/Appellee:** Invest in Arizona (Sponsored by AEA and Stand for Children) (“IIA”), a political committee

**Amici Curiae:  
(in Support of Appellants)** Goldwater Institute and Attorney General Mark Brnovich

**Amicus Curiae:  
(in Support of Appellee)** The Arizona Center for Law in the Public Interest

**FACTS:**

**Senate Bill 1828**

The First Regular Session of the Fifty-Fifth Arizona Legislature passed, and Governor Ducey signed, Senate Bill (S.B.) 1828, the omnibus appropriations bill for fiscal year 2022. Sections 13 and 15 of the bill impose a “flat” tax of 2.5% on taxable income, which becomes effective if General Fund revenues reach certain specified targets. *See* 2021 Ariz. Laws ch. 412, §§ 13, 15.

**Referendum**

Article IV, part 1 § 1(3) of the Arizona Constitution (“Section 1(3)”) establishes the power of referendum, the constitutional right to vote on legislation enacted by the Legislature and signed by the Governor. Under Section 1(3), any legislative act may therefore be submitted to the people at the polls except for two types of legislation: 1) laws to preserve the “public peace, health, or safety,” or 2) laws enacted “for the support and maintenance” of the state government and state institutions. When an act is successfully referred to the people and will be at issue in the next election, such an act becomes inoperable unless the referendum is defeated at the election. Ariz. Const. art. IV, pt. 1, § 1 (5).

IIA filed a referendum petition (R-03-2021) to “refer” S.B. 1828 to the ballot in the November 8, 2022 general election. The Secretary concluded that the petition was legally sufficient, and certified the referendum for placement on the November 8, 2022 general election ballot.

**Superior Court Proceedings**

On July 21, 2021, Appellants sought a preliminary injunction prohibiting the Secretary from accepting or certifying any petition filed in support of a referendum on S.B. 1828. They argued that tax measures are legislative acts enacted for “the support and maintenance” of the State; therefore,

S.B. 1828 cannot be referred to the ballot.

Following briefing and oral argument, the court issued a ruling on December 20, 2021. The court found that S.B. 1828 is referable and should be submitted to voters in the 2022 General Election, subject to a ruling on the petition sheets/signatures. Specifically, the court determined that the Constitution provides and *Garvey v. Trew*, 64 Ariz. 342 (1946), holds that legislative acts are exempt from referendum if they involve appropriations. The court concluded that S.B. 1828 does not appropriate funds, and, therefore, was not exempt. The court determined that S.B. 1828 was subject to referendum under *Wade v. Greenlee County*, 173 Ariz. 462 (App. 1992), as well because it would reduce, not raise, tax revenue. Since S.B. 1828 did not appropriate state funds or generate necessary revenue, the court reasoned it does not fall within the “support and maintenance” exception in the Arizona Constitution, and voters have a constitutional right to vote on it. The court, therefore, denied Appellants’ motion for a preliminary injunction and granted IIA’s motion to dismiss the claims. This timely election appeal followed pursuant to Arizona Rule of Civil Appellate Procedure 10(d)(1).

## ISSUES:

As presented by Arizona Free Enterprise:

1. Did the trial court err in holding that the exemption from the referendum for laws “for the support and maintenance of the departments of the state government and state institutions,” Ariz. Const. art IV, pt. 1, § 1(3), applies only to budgetary appropriations, and not to revenue measures?
2. Did the trial court err in holding that, if and to the extent the “support and maintenance” clause does apply to revenue measures, it exempts from the referendum only laws that the trial court projects will increase net revenues over some unspecified period of time?
3. Did the trial court err in holding, when ruling on a motion to dismiss, that sections 13 and 15 of S.B. 1828 will not result in increased net revenues, despite the existence of unresolved factual questions concerning the budgetary effects of those provisions?

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office 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.*