



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PUENTE, ET AL. v. ARIZONA STATE LEGISLATURE
CV-22-0069-PR**

PARTIES:

Petitioner: Arizona State Legislature

Respondents: Puente, Mijente Support Committee, Jamil Naser, Jamaar Williams and Jacinta Gonzales

FACTS:

On December 4-6, 2019, the American Legislative Exchange Council (“ALEC”) hosted the “States and National Policy Summit” (“the Summit”) in Scottsdale, Arizona. ALEC is a non-profit organization that seeks to bring together corporate lobbyists and federal, state, and local elected officials to consider and vote upon model bills to be introduced in state legislatures across the country. ALEC’s meetings are closed to the public. The Summit was not open to the public, and no minutes or records of the proceedings were made available publicly.

Twenty-six Arizona Republican legislators were in attendance at the Summit, along with 198 total registered legislators from 35 states across the country and 554 registered non- legislators, including corporate lobbyists.

On the first day of the Summit, two non-profits, Puente and Mijente Support Committee, and three individuals, Jamil Naser, Jamaar Williams and Jacinta Gonzales (“Plaintiffs”), filed suit against the Arizona Legislature. Their Complaint alleged that 26 members of the Legislature had attended an August 2019 ALEC meeting in Austin, Texas and, based on past ALEC practice, these Legislators would also attend the December 4-6 meeting in Scottsdale.

The Complaint further alleged that the Legislators comprised quorums of five legislative Committees of the Legislature, and that that their attendance would violate the Arizona Open Meeting Law (OML), which includes in its scope the Legislature as a “public body” to which the OML provisions apply. A.R.S. § 38-431.01(A) (“All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.”); A.R.S. § 38-431(6) (defining “public body” to include “the legislature” “and all standing . . . committees” of any public body).

Plaintiffs sought the following relief: (1) a declaratory judgment that the Legislators’ participation violated the OML; (2) an order that all “model bills” drafted during the Summit and submitted to the Legislature “be subject to the requirements” of the OML; (3) a finding that all materials documenting the information presented at the Summit constituted public records subject to Arizona’s public records laws; and (4) an injunction preventing members constituting any quorum of an

Arizona legislative committee from attending any future ALEC meetings or similar events that did not comply with the OML..

In March 2020, the Legislature filed a Motion to Dismiss the Complaint under Ariz. R. Civ. P. 12(b)(6). On November 5, 2020, after oral argument, Judge Mikitish issued an Under Advisement ruling granting the Motion to Dismiss on the grounds that the enforcement of the OML in this case was a non-justiciable “political question.” Judge Mikitish emphasized that the OML itself acknowledges a constitutional grant of authority to the Legislature by noting that “either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2 section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article.” A.R.S. §38-431.08 (D).

The judge quoted the relevant portions of the Arizona Constitution, which provide in art. IV, pt. 2, §§ 8, 9 as follows:

8. Organization; officers; rules of procedure

Each house [of the Legislature], when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure.

9. Quorum; compelling attendance; adjournment

The majority of the members of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe....

The judge concluded that, “[b]ecause the issue in this case is a political question, the Court must decline to address it.” He reasoned that “[t]he political question doctrine flows from the basic principle of separation of powers and acknowledges that some decisions are entrusted to branches of government other than the judiciary. For these reasons, Arizona courts refrain from addressing political questions. *Kromko v. Arizona Board of Regents*, 216 Ariz. 190, 192-193 (2007).”

The judge therefore declined to address the issue of whether the Summit constituted a meeting of a political caucus which was exempted from the requirements of the OML under A.R.S. § 38-431-08 (A)(1). He entered judgment for the Legislature on its Motion to Dismiss. Plaintiffs appealed.

The Arizona Court of Appeals, in a 2-1 split decision, reversed. The Majority emphasized that the Legislature did not exempt itself when it enacted the OML citing *Fann v. Kemp*, 1 CA-SA 21-0141, 2021 WL 3674157, at *3 ¶ 15 (Ariz. App. August 19, 2021) (mem. decision) (the Legislature could have completely exempted itself from statutory requirements but chose not to do so).

The Majority concluded that, “[b]y enacting a statute that expressly imposes open-meeting requirements on itself, the Legislature implicitly and necessarily acceded to judicial enforcement of those requirements, even while it retained its authority under the Constitution to adopt other procedural rules.” The Majority therefore concluded that judicial review of the Legislature’s compliance with the OML was not a political question implicating the separation of powers doctrine. Viewing the Complaint in its entirety, the Majority concluded that Plaintiffs had alleged sufficient facts from which a reasonable inference could be drawn that the Legislators violated the OML.

Judge Thumma concurred in part and dissented in part, noting that Plaintiffs had conceded on appeal that any meeting by the required number of the Legislators at the Summit was a “political caucus.” Accordingly, he held, this unique factual record obliged him to conclude that the “political caucus” exception to the OML applied here. He concluded that, although he concurred with the remainder of the Majority’s opinion, he was obliged to dissent on this one point.

The Legislature petitioned the Arizona Supreme Court for review, contending that the issue of whether claims against the Legislature arising from the OML are justiciable is one of first impression and implicates the constitutional separation of powers. The Supreme Court granted the Petition for Review.

ISSUES:

1. Did the Court of Appeals (“CoA”) err in finding Plaintiffs’ claims justiciable, even though the Arizona Constitution confers plenary authority on each house of the Legislature to determine and enforce its own rules of procedure, Ariz. Const. art. IV, pt. 2, §§ 8–9?
2. Did the CoA err in holding that the Legislature’s adoption of internal rules governing the meetings of each house and its committees did not exempt it from the Arizona Open Meeting Law, A.R.S. § 38-431 et seq. (“OML”), even though the OML allows “[e]ither house of the legislature [to] adopt a rule or procedure . . . provid[ing] an exemption” from its terms, A.R.S. § 38-431.08(D)?
3. Did the CoA err in holding that the OML’s exemption for meetings of a “political caucus of the legislature,” A.R.S. § 38-431.08(A)(1), was inapplicable, even though all the legislators who allegedly attended the private conference at issue were members of the Republican caucus?
4. Did the CoA err in holding that the Legislature bears the burden of disproving Plaintiffs’ allegations that certain non-party legislators, constituting a quorum of one or more committees, violated the OML by attending a national private conference at which public policy issues might have been discussed?

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