



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**GREG MILLS, et al. v. STATE OF ARIZONA
CV-25-0002-PR**

PARTIES:

Petitioners: Greg Mills (“Mills”) and Southwest Engineering Concepts, LLC (“SOENCO”) (Mills and SOENCO are collectively referred to as “Plaintiffs”)

Respondents: State of Arizona (the “State”)

Amicus: Goldwater Institute, National Federation of Independent Small Business Legal Center, Inc., and Cato Institute, in support of Plaintiffs

National Council of Examiners for Engineering and Surveying, in support of the State

FACTS:

Mills is an engineer who designs, analyzes, tests, and builds electronic circuits for consumer products through his consulting firm, SOENCO. The Arizona Board of Technical Registration (the “Board”) regulates several technical professions, including engineers. Under the applicable statutes, persons engaging in “engineering practice” must comply with the Board’s qualifications and standards, including testing and registration.

Before Mills started SOENCO in 2008, Mills spent decades doing similar work as an employee for manufacturing companies. When Mills worked for the manufacturing companies, he was not required to test for and register as an engineer due to a statutory exemption. Mills also did not complete testing for and register as an engineer once he started SOENCO.

In 2019, following a customer complaint, the Board investigated Mills and SOENCO and determined that they were engaging in “engineering practice” and advertising their services as “engineers” when they were not registered with the Board. A violation of the applicable statutes is a class two misdemeanor that subjects the offenders to fines and possible incarceration. The Board and Mills were unable to informally resolve the complaint, and they dispute whether his work requires registration with the Board. The Board did not initiate formal proceedings against Mills and SOENCO.

Mills and SOENCO subsequently filed this lawsuit against the Board and its members. The action sought a declaration that the statutes and the Board’s powers and procedures are unconstitutional because they violate the free speech, economic liberty, due process, and separation of powers guarantees of the Arizona Constitution. The superior court initially dismissed the complaint, finding that Plaintiffs failed to exhaust administrative remedies, the claims were unripe, and Plaintiffs lacked

standing. The court of appeals affirmed. This Court reversed and remanded the case for further proceedings. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415 (2022). While this issue was pending before the Court, the Arizona Legislature amended the statutes defining “Engineer” and “Engineering practice,” and it added a new statutory provision defining “Professional engineer.” *See* A.R.S. §§ 32-101(10), (11), (29).

Following remand from this Court, Plaintiffs filed an amended complaint and substituted the State for the Board as a defendant. The amended complaint alleged that: (1) the applicable statutes unconstitutionally prohibit Mills from speaking, writing, or publishing any advertisement that he is an engineer or is qualified to do engineering; (2) both the current and former definitions of “engineering practice” are unconstitutionally vague and deny Mills the ability to conform his actions to the dictates of the law in violation of his due process rights; and (3) the registration requirements unnecessarily hamper Mills’s right to earn an honest living and are unreasonable, arbitrary, oppressive, or monopolistic.

The State filed a motion to dismiss, which the superior court granted. The court of appeals affirmed. The court first rejected Plaintiffs’ vagueness claim, reasoning that their work fell squarely within the definition of “engineering practice,” which means that they lack standing to challenge the statute as vague. The court next rejected Plaintiffs’ claim that statutory speech restrictions are unconstitutional because they prevent him from using the term “engineer.” The court last rejected Plaintiffs’ argument that restrictions on the practice of engineering deprived them of their right to earn a living in violation of due process and equal protection guarantees.

ISSUES:

1. What Arizona constitutional standard applies to economic liberty claims?
2. Are Plaintiffs not “similarly situated” to a statutorily benefitted group just because the statute excludes them?
3. Does the restriction of Plaintiffs’ advertising implicate free speech rights?

STATUTES:

§ 32-101. Purpose; definitions (effective September 29, 2021)

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

* * *

10. “Engineer” means a person who by reason of engineering education, training and experience may apply engineering principles and interpret engineering data.

11. “Engineering practice” means any professional service or creative work requiring engineering education, training and experience in applying engineering principles and interpreting engineering data to engineering activities that clearly impact the health, safety and welfare of the public and the engineering design of buildings, structures, products, machines, processes and systems to the extent that the engineering education, training and experience requirements prescribed by §§ 32-122 and 32-122.01 are necessary to protect the health, safety and welfare of the public. The services or creative work may include providing planning services, studies, designs, design coordination, drawings, specifications and other technical submissions, surveying as prescribed in paragraph 22, subdivisions (d) and (e) of this subsection, and reviewing construction or other design products for the purposes of monitoring compliance with drawings and specifications related to engineered works. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer. A person is deemed to practice engineering if the person does any of the following:

- (a) Practices any discipline of the profession of engineering or holds out to the public that the person is able and authorized to practice any discipline of engineering.
- (b) Represents to the public that the person is a professional engineer by a verbal claim, sign, advertisement, letterhead or card or in any other manner.
- (c) Uses a title that implies that the person is a professional engineer.

* * *

29. “Professional engineer” means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

* * *

§ 32-101. Purpose; definitions (effective until September 28, 2021)

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

* * *

10. “Engineer” means a person who, by reason of special knowledge of the

mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 22, subdivisions (d) and (e) of this subsection, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if the person practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents that the person is a professional engineer or is able to perform or does perform any engineering service or other service recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer.

* * *

A.R.S. § 32-121. Certificate or registration required for practice

Except as otherwise provided in this section, a person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter. . . .

A.R.S. § 32-122.01. Qualifications for professional registration

A. An applicant for professional registration as an architect, engineer, geologist or landscape architect shall:

1. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years.
2. Unless exempt under § 32-126, pass the applicable in-training and professional examinations in the profession in which registration is sought.

* * *

D. Except as provided in subsection E of this section, experience credited by the

board under this section and §§ 32-101, 32-122 and 32-126 must be attained under the direct supervision of a professional who is satisfactory to the board and registered in this state, another state or a foreign country in the profession in which the applicant is seeking registration, except that up to one year's experience may be attained under the direct supervision of a professional who is satisfactory to the board and registered in another profession regulated under this chapter in this state, another state or a foreign country.

E. By a two-thirds majority vote, the board may allow an applicant except for an architect applicant to meet the requirements of subsection D of this section by crediting comparable experience satisfactory to the board that the applicant attained without direct supervision of a registered professional.

A.R.S. § 32-141. Firm Registration

A. A firm shall not engage in the practice of any board-regulated profession or occupation unless the firm is registered with the board and the professional services are conducted under the full authority and responsible charge of a principal of the firm, who is also a registrant. . . .

A.R.S. § 32-144. Exemptions and limitations; definition

* * *

C. The requirements of this chapter do not apply to work done by any communications common carrier or its affiliates or any public service corporation or manufacturing industry or by full-time employees of any of them if such work is in connection with or incidental to the products, systems or nonengineering services of the communications common carrier or its affiliates or public service corporation or manufacturing industry and if the engineering service is not offered directly to the public.

* * *

A.R.S. § 32-145. Violations; classification

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice any board regulated profession or occupation if the person is not registered or certified as provided by this chapter.
2. Advertises or displays any card, sign or other device that may indicate to the public that the person is certified or registered or is qualified to practice any board regulated profession or occupation if the person is not certified or registered as provided by this chapter.
3. Uses “certified”, “professional certified”, “professional”, “PE”, “registered”, “registered professional” or “professional registered” in conjunction with any board regulated profession or occupation if the person is not certified or

registered as provided by this chapter.

4. Uses a certification or certificate of registration of another, or uses an expired or revoked certification or certificate of registration.
5. Presents false evidence to the board with the intent to obtain a certification or a certificate of registration.
6. Otherwise violates any provision of this chapter.

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.