



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**KAREN FANN, et al. v. STATE OF ARIZONA, et al.
CV-21-0058-T/AP**

PARTIES:

Plaintiffs/Appellants:

Karen Fann; Russell “Rusty” Bowers; David Gowan; Venden Leach; Regina Cobb; John Kavanagh; Montie Lee; Steve Pierce; Francis Surdakowski, M.D.; No on 208, an Arizona political action committee; and Arizona Free Enterprise Club, an Arizona non-profit corporation

Defendants/Appellees:

State of Arizona; Kimberly Yee, in her official capacity as Arizona State Treasurer; and Arizona Department of Revenue

Intervenor-Defendants/Appellees:

Invest in Education (sponsored by AEA and Stand for Children), a political action committee; and David Lujan

*Amicus Curiae:
(in support of Plaintiffs)*

Alliance Defending Freedom and Center for Arizona Policy; Americans For Tax Reform and Arizona Small Business Association; Arizona Business Leaders; Arizona Commerce Authority; Arizona Farm Bureau Federation; Arizona Tax Research Association and Arizona Chamber of Commerce & Industry; and Economist Elliott Pollack & Alan Maguire

*Amicus Curiae:
(in support of Defendants)*

Arizona School Boards Association; Arizona Advocacy Network, Arizona Wins!, Ballot Initiative Strategy Center, & Living United for Change in Arizona (collectively Potential Ballot Initiative Proponents); Kathy Hoffman in her official capacity as Superintendent of Public Instruction; Save Our Schools Arizona, Education Law Center, & the Southern Poverty Law Center; Senate Minority Leader Rebeca Rios and House Minority Leader Reginald Bolding (collectively “Legislative Democrats”); and Tax Professor Erin Scharff

FACTS:

Invest in Education (“Proposition 208”) is a citizen initiative that amends Arizona statutes by implementing a new income tax surcharge of 3.5% on taxable income in excess of \$250,000 for taxpayers filing individually, or \$500,000 for taxpayers filing jointly or as heads of household. The purpose of the tax is to advance public education for taxable years beginning from and after December 31, 2020. The tax is separate from other state taxes and cannot be reduced.

On November 3, 2020, 51.75% of Arizona voters approved Proposition 208, and the law became effective on January 1, 2021.

On November 30, 2020, Plaintiffs requested a temporary restraining order and a preliminary injunction to prohibit the State and its revenue collection and distribution agencies from taking any action to enforce Proposition 208, levying any surcharge, or appropriating general fund public monies to pay for costs associated with it. In their motion, Plaintiffs alleged Proposition 208:

- 1) sought to exempt itself from the expenditure limitations for school districts specified in the Arizona Constitution (art. IX, § 21);
- 2) violated the Arizona Constitution’s requirement (art. IX, § 22) that any new tax to be imposed by statute can only be imposed by the legislature through a two-thirds majority;
- 3) violated the Revenue Source Rule in the Arizona Constitution (art. IX, § 23) because its new source of funding did not cover all mandated appropriations and the “no supplant” clause mandated expenditure of general funds by forbidding the legislature from causing a reduction in other funding sources; and
- 4) violated the Arizona Constitution (art. IV) because it, through the “no supplant” clause, attempted to restrict the legislature’s ability to exercise its constitutional authority to appropriate general funds.

On December 3, 2020, the proponents of Proposition 208 moved to intervene, which the superior court granted. After full briefing on Plaintiffs’ Motion for Preliminary Injunction, the court heard oral argument on December 23, 2020.

On January 13, 2021, the superior court issued a ruling and denied the request for preliminary injunction as it pertained to claims challenging the “no supplant” clause. That ruling is not the subject of the appeal.

On February 5, 2021, the superior court ruled on the remaining issues, denying the Motion for Preliminary Injunction.

Plaintiffs appealed and requested that the Court of Appeals reverse the superior court’s denial of a preliminary injunction and declare Proposition 208 unconstitutional. Plaintiffs subsequently filed a petition to transfer with the Arizona Supreme Court, which was granted.

PLAINTIFFS' ISSUES:

The central issue raised by Plaintiffs' appeal is whether the superior court erred by denying Plaintiffs' application for preliminary injunction to prevent enforcement of Proposition 208. Subsumed within this issue are two constitutional questions:

1. Can the Proposition, a statutory initiative, exempt itself from the expenditure limitations for school districts imposed by article IX, section 21 of the Arizona Constitution, and, if it cannot, would rational voters have adopted the Proposition's tax knowing that its revenues could not be spent?
2. Can the Proposition impose a new tax without a supermajority vote of both houses of the legislature, as required by article IX, section 22 of the Arizona Constitution?

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.