



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**ANDY BIGGS ET AL. v. JANICE K. BREWER ET AL.  
CV-14-0132-PR**

**PARTIES:**

*Petitioner:* Governor Janice K. Brewer and Thomas J. Betlach, Director of the Arizona Health Care Cost Containment System

*Respondents:* Andy Biggs, Andy Tobin, Nancy Barto, Judy Burges, Chester Crandell (deceased), Gail Griffin, Al Melvin, Kelli Ward, Steve Yarbrough, Kimberley Yee, John Allen, Brenda Barton, Sonny Borrelli, Paul Boyer, Karen Fann, Eddie Farnsworth, Thomas Forese, David Gowan, Rick Gray, John Kavanagh, Adam Kwasman, Debbie Lesko, David Livingston, Phil Lovas, J.D. Mesnard, Darin Mitchell, Steve Montenegro, Justin Olson, Warren Petersen, Justin Pierce, Carl Seel, Steve Smith, David Stevens, Bob Thorpe, Kelly Townsend, Michelle Ugenti, Jeanette Dubreil, Katie Miller, and Tom Jenney.

*Amici Curiae in Support of the Petition for Review:*

- (1) Arizona Center for Law in the Public Interest and The William E. Morris Institute for Justice.
- (2) Fife Symington III, Steve Pierce, Anna Tovar, Leah Landrum Taylor, Bob Worsely, Bob Robson, Heather Carter, Chad Campbell, Lela Alston, Eric Meyer, Kate Brophy McGee, Douglas Coleman, Jeff Dial, Debbie McCune Davis, Ethan Orr, Frank Pratt, T.J. Shope, Victoria Steele, Martin Quezada, Bruce Wheeler, Greater Phoenix Leadership, Southern Arizona Leadership Council, Arizona Chamber of Commerce and Industry, and Greater Phoenix Chamber of Commerce.
- (3) Arizona Hospital and Healthcare Association, Abrazo Health Care, Banner Health, and Dignity Health

*Amicus Curiae in Support of the Response to Petition for Review:* Pacific Legal Foundation.

**FACTS:**

In 1992 Arizona voters approved “Proposition 108,” an initiative measure that added Art. 9, § 22 to the Arizona Constitution. Proposition 108 requires, in part, that “[a]n act that provides for a net increase in state revenues” requires passage by a supermajority, or a vote of “two-thirds of the members of each house of the legislature.” This supermajority requirement applies to any act that imposes “any new state fee or assessment” or authorizes “any new administratively set

fee.” The supermajority requirement does not apply to “[f]ees and assessments that are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency.”

In 2013, the Arizona Legislature passed House Bill 2010 (“HB 2010”) by a simple majority. HB 2010 created Arizona’s “expanded Medicaid program.” See A.R.S. §§ 36-2901.07, 2901.08, and 2901.09. During the legislative process, attempts to require a Proposition 108 supermajority for passage of HB 2010 were raised, debated, and rejected at least three times. It was signed into law by the Governor and became effective January 1, 2014.

A.R.S. § 36-2901.08 (entitled “Hospital assessment”) authorizes the Director of AHCCCS to “establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs.” The assessment helps fund Medicaid coverage for qualified childless adults and enables Arizona to continue to receive federal funds for Medicaid coverage for these individuals.

The nature of the “assessment” under A.R.S. § 36-2901.08 is a pivotal issue in the subject litigation, as the challengers contend the bill imposed a new tax on hospitals within the meaning of Art. 9, § 22 and therefore required passage by a two-thirds supermajority.

Thirty-six Arizona legislators who opposed HB 2010, two constituents whose representatives opposed HB 2010, and one taxpayer seeking to bring suit under Arizona’s private attorney general statute (collectively, “the Legislators”) filed suit in superior court seeking to enjoin enforcement of §§ 36-2901.08 and -2901.09.

Defendants Governor Brewer and AHCCCS Director Betlach (collectively, “the Governor”) moved to dismiss the Legislators’ complaint for lack of standing. The trial court ruled in favor of the Governor. Count One of the complaint alleged that “because H.B. 2010 was not properly approved, [plaintiffs’] votes did not count and the new law create[d] an illegal tax on hospitals.” The trial court found the Arizona Supreme Court’s case in *Bennett v. Napolitano*, 206 Ariz. 520, 524, 81 P.3d 311, 315 (2003), was dispositive. In that case, which also involved legislator plaintiffs, the Arizona Supreme Court held that the plaintiffs had to establish that their alleged injury is “personal, particularized, concrete, and otherwise judicially cognizable.” Because the legislators could not make this showing, the Court held they lacked standing. The trial court found the same to be true in this case. The Legislators lacked standing because they did not allege a “particularized” injury.

The Legislators also alleged that HB 2010 improperly delegated the Legislature’s authority. The trial court found that “[a]t best they assert[ed] an injury to the Legislature as a whole, not a specific injury to themselves.” To bring such a claim, the legislature must authorize a lawsuit, which did not happen in this case. The trial court concluded that, “[i]n short, [the Legislators] are a minority group within the Legislature who lost a battle over H.B. 2010. They do not claim to have a concrete, individual injury. Rather, they seek to overturn the vote of the House and Senate. . . . Like the legislator plaintiffs in *Bennett*, Plaintiffs here lack standing.”

The Legislators sought special action relief from the trial court’s ruling. The court of

appeals accepted jurisdiction and, citing *Bennett v. Napolitano*, 206 Ariz. at 526–27 ¶ 28, 81 P.3d at 317–18, held that, generally, legislators do not possess standing to sue. In *Coleman v. Miller*, 307 U.S. 433 (1939), however, the United States Supreme Court held that legislators have standing to challenge whether a measure was passed in a constitutional manner if the circumstances are such that, if the plaintiffs’ allegation were true, their “votes against ratification [had] been overridden and virtually held for naught....” *Coleman*, 307 U.S. at 438.

Distinguishing the facts in *Bennett*, the court of appeals determined the injury to the Legislators in this case was more than the “loss of political power” found in *Bennett*. Here, if HB 2010 was constitutionally required to be passed by a supermajority, the Legislators experienced an unconstitutional “overriding” that “virtually held [their votes] for naught.” Like private citizens, legislators have a constitutional right to have their votes count a certain amount, and if a vote is properly alleged to have counted less, standing exists to claim a constitutional injury. The court therefore reversed the trial court’s ruling dismissing the Legislators’ Complaint.

**ISSUE:**

“Do individual legislators have standing to challenge a law simply by alleging that a supermajority was required for its passage?”

*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.*