



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



BIGGS et al. v. BETLACH/MACIAS et al.
CV-17-0130-PR

242 Ariz. 55, 392 P.3d 499 (App. 2017)

PARTIES:

Petitioners: Andy Biggs *et al.*

Respondents: Thomas J. Betlach *et al.*

Amici Curiae: Pacific Legal Foundation, Howard Jarvis Taxpayers Association, and Green Valley Hospital

FACTS:

In 1992, Arizona voters approved Proposition 108, a constitutional requirement that two-thirds of the members of each house of the Legislature approve any tax increase. The resulting provision, [Ariz. Const. art. 9, § 22](#), requires that any act that provides for “a net increase in state revenues” be passed by a supermajority and makes the requirement applicable to “any new tax” or “any new state fee or assessment or the authorization of any new administratively set fee.” Subsection C provides an exception for “[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 2000, Arizona voters approved Proposition 204, which obligated the State of Arizona to provide healthcare insurance to persons whose incomes do not exceed 100 percent of the federal poverty guidelines. See [A.R.S. § 36-2901.01\(A\)](#). In 2010, with the enactment of the Patient Protection and Affordable Care Act, the federal government offered states funding to cover the major portion of an ACA expansion to the states’ existing Medicaid programs from four categories of persons (the disabled, blind, elderly and families with dependent children) to the entire nonelderly population with income below 133 percent of the federal poverty level. Participating states were to cover the nonfederal portion of costs.

At a special session called by Governor Brewer in 2013, a simple majority of each House of the Arizona Legislature passed H.B. 2010 to fund Medicaid expansion. The bill extended coverage to persons eligible under the federal Medicaid Act; *i.e.*, the entire population with income below 133 percent of the federal poverty level. The bill was codified as [A.R.S. § 36-2901.08](#). To fund the coverage of over 250,000 new insureds, H.B. 2010 provided for an “assessment” to be paid by Arizona hospitals. The Legislature assigned responsibility for establishing the amount of the assessment to the director of the Arizona Healthcare Cost Containment System (“AHCCCS”), Arizona’s Medicaid program. The resulting statutory provision, [A.R.S. § 36-2901.08](#), provides in subsection A that “[t]he director shall establish, administer and collect” the hospital assessment.

The statute defines the AHCCCS director's role this way:

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment. The assessment is subject to approval by the federal government to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications or exemptions to the assessment. In determining the modifications or exemptions, the director may consider factors including the size of the hospital, the specialty services available to patients and the geographic location of the hospital.

D. Before implementing the assessment, and thereafter if the methodology is modified, the director shall present the methodology to the joint legislative budget committee for review.

Legislator Andy Biggs and other legislators who voted against H.B. 2010 filed suit against Governor Brewer and AHCCCS Director Betlach, alleging that H.B. 2010 was unconstitutional for failing to comply with the supermajority requirement of [Article 9, § 22](#).

The trial court initially dismissed the case for lack of standing. The Arizona Court of Appeals reversed on the standing issue and the Arizona Supreme Court affirmed its opinion. [Biggs v. Cooper ex rel. County of Maricopa, 236 Ariz. 415, 420 ¶ 21, 341 P.3d 457, 462 \(2014\)](#). Following remand, the Plaintiffs filed a motion for summary judgment on the constitutionality of the hospital assessment. The superior court judge upheld the assessment as exempt from the supermajority requirement under Article 9, § 22(C)(2). He ruled it was not a tax under the three factors the Arizona Supreme Court outlined in [May v. McNally, 203 Ariz. 425, 430–31 ¶ 24, 55 P.3d 768, 773–74 \(2002\)](#) (quoting [Bidart Bros. v. Cal. Apple Comm'n, 73 F.3d 925, 931 \(9th Cir. 1996\)](#)). He also determined that it fit within the constitutional exception to the supermajority requirement; *i.e.*, it was “authorized by statute,” “not prescribed by formula, amount or limit,” and “set by a state officer or agency” within the meaning of [Article 9, § 22\(C\)\(2\)](#). The trial court therefore entered summary judgment in favor of Brewer and Betlach. Biggs appealed, and the Court of Appeals affirmed. This Court granted review.

ISSUE:

Article IX, Section 22 of the Arizona Constitution requires a two-thirds supermajority vote of both legislative houses for any bill that ‘provides for a net increase in state revenues.’ Did the Court of Appeals err by ruling that the Medicaid expansion tax (A.R.S. § 36-2901.08) does not violate Article IX, Section 22 of the Arizona Constitution, even though it received only a bare majority?

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