SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-007925   09/12/2011

                                                    CLERK OF THE COURT
HONORABLE EILEEN S. WILLETT   J. Rutledge
                                                          Deputy

JAYNE FRIEDMAN   CHRISTINA KOHN

v.

CAVE CREEK UNIFIED SCHOOL DISTRICT #   DONALD M PETERS
93, et al.

UNDER ADVISEMENT RULING

The Court has considered: Defendants' Motion for Summary Judgment and Statement of Facts filed April 27, 2011; Plaintiffs' Response to Defendants' Motion for Summary Judgment and Statement of Facts filed June 17, 2011; Plaintiffs' Motion for Summary Judgment and Statement of Facts filed June 17, 2011; Defendants' Reply in Support of Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment filed July 5, 2011; Defendants' Statement of Facts in Response to Plaintiffs' Motion for Summary Judgment filed July 5, 2011; Plaintiffs' Reply in Support of Motion for Summary Judgment filed August 1, 2011; authorities cited, attachments, oral argument of counsel, and all information presented.

At issue in this case is the constitutionality of 2010 Ariz. Sess. Laws 332 § 34 ("Section 34"). Whether Section 34 is constitutional is a question of law for the Court. The material facts of this case are uncontroverted. This case is a matter of first impression in the State of Arizona. The Court finds as a matter of law that Section 34 is unconstitutional.

On November 7, 2000, Cave Creek Unified School District No. 93 ("the District") held a Special Election for voter consideration of a $41.6 million class B bond measure for the construction of new schools and the acquisition of buses. Arizona Constitution Article VII, § 13 requires that all bond issues be approved by the voters. A.R.S. § 15-491(H)(6) further requires

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school districts wishing to issue class B bonds to mail a Publicity Pamphlet to each voting household, specifying a "complete list of each proposed capital improvement that will be funded with the proceeds of the bonds."

The voters approved the District's bond measure as presented to them, and bonds were issued. A.R.S. § 15-1022 requires a school district to repay its bonds by levying a tax on property within the district to cover both interest and principal due. Plaintiffs are taxpayers within the school district. Plaintiffs' property taxes finance repayment of the bonds. Plaintiffs have established standing.

The District still owes approximately $17.9 million on the bonds in question. To pay back the bonds, District taxpayers can expect to be assessed approximately an additional 13 years of tax levied on their property. $13 million of the proceeds from the District's bond measure remain unspent. At the time the bond measure passed, and until Section 34 became law, A.R.S. § 15-1024(B)(1) mandated that all unspent money be used to pay down the bond debt. This condition is also set forth within the Publicity Pamphlet that the voters relied upon when casting their ballot in the Special Election. In addition, at the time of the Special Election, A.R.S. § 15-491(J) expressly prohibited "the use of bond proceeds for any purpose other than the proposed capital improvements listed in the publicity pamphlet," with limited exception for a small portion of the money to be spent on cost overruns and general capital expenses not applicable to this case.

Section 34 allows the District to spend 2000 bond funds on projects not approved by the voters or specified in the Publicity Pamphlet which accompanied the Special Election. Section 34 states:

> . . . when nine years or more have passed since an election that
> authorized a school district to issue bonds, the school district may
> choose to use the proceeds of any bonds authorized at that election
> for any necessary capital improvement, provided the school district's
> governing board votes to authorize the proposed use of the bond
> proceeds prior to June 30, 2013.

The Court finds that Section 34 essentially abrogates the voters' rights existing at the time of their bond vote, and by so doing, strikes a blow to the election process and violates both the Arizona and Federal Constitution under the contract clause by retroactively impairing the reasonable expectations of the body politic within the District. U.S. Constitution, Art. 1, § 10, Cl. 1; Arizona Constitution Art. II, § 25. The 2000 Bond Election was an agreement between the District and the people, the terms of which were expressly stated in the Publicity Pamphlet. Section 34 impermissibly relieves the District of its obligation to the detriment of the people. No

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significant, legitimate public purpose exists which justifies the Government's retroactive taking. *Baker v. Ariz. Dept. of Revenue*, 209 Ariz. 561, 105 P.3d 1180 (App 2005); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004).

In short, the Court finds that Section 34 retroactively changes the uses for which voter approved bond measure money may be spent. Section 34 is contrary to the reasonable expectations of taxpayers within the District, the express purpose of a bond election, and the Federal and Arizona Constitution. See also, Arizona Constitution Article VII, § 13.

Finally, The Court finds that Section 34 constitutes a special law and as such also violates Article IV, Part 2, § 19 of the Arizona Constitution. See, *Town of Gilbert v. Maricopa County*, 213 Ariz. 241, 141 P.3d 416 (App. 2006). Plaintiffs have met their burden of proof. Section 34 fails the three prong test set forth in *Town of Gilbert v. Maricopa County*.

IT IS ORDERED granting Plaintiffs' Motion for Summary Judgment. Defendants' Motion for Summary Judgment is denied.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.