

**Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE**

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**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

JAYNE FRIEDMAN and RICHARD
BAIL,

Plaintiffs,

vs.

CAVE CREEK UNIFIED SCHOOL
DISTRICT #93; DEBBI BURDICK, in her
official capacity as Superintendent for
Cave Creek Unified School District;
DAVID SCHAEFER, MARK WARREN,
SUSAN CLANCY, CASEY PERKINS,
and STEPHANIE REESE, in their official
capacities as members of Cave Creek
Unified School District Governing Board;
and KATHIE AMABISCA, in her official
capacity as Director of Finance for Cave
Creek Unified School District,

Defendants.

Case No.: CV2011-007925

AMENDED COMPLAINT

(for Injunctive and Declaratory Relief)

Hon. Eileen S. Willett

Introduction

1. When school districts borrow money for projects by issuing bonds, they put taxpayers on the line to repay the funds. For this reason, Arizona law requires district officials to create publicity pamphlets that outline the specific improvements the bonds would finance, enabling voters to determine whether the projects are worth the extra tax burden. Until recently, an Arizona statute prohibited governments from using bond proceeds for purposes other than those approved by the voters. A.R.S. § 15-491(J). But a new law, 2010 Ariz. Sess. Laws 332 § 34, carves out an exception that allows the preferences of just three school board members to override the constitutionally-protected will of the voters. Taking advantage of this new law, Cave Creek Unified School District Board Members have voted to spend money that voters had specifically designated for *new* school construction on a variety of renovations and improvements that the Board Members prefer, none of which were approved by the voters.

2. Plaintiffs Jayne Friedman and Richard Bail, Cave Creek voters and taxpayers whose tax dollars will be used to repay the 2000 bonds, seek to enforce the contract the bond election created between the District and the voters. Section 34 impermissibly impairs this contract in violation of the federal and state contracts clauses by allowing the District, without prior notice to the voters, to violate its end of the bargain and replace voter approval with Board Member preferences. Furthermore, the law only applies to a discrete group of existing bonds. Since the Arizona Constitution prohibits the legislature from granting special privileges, § 34 is an

unconstitutional special law. Because § 34 and Defendants' actions taken pursuant to that statute violate the federal and state constitutions, § 34 cannot stand, and any future expenditure made pursuant to it must be enjoined.

Parties, Jurisdiction and Venue

3. Plaintiff Friedman is a citizen of the United States and a resident and property taxpayer of Maricopa County in the State of Arizona. She is a registered voter in the Cave Creek Unified School District.

4. Plaintiff Bail is a citizen of the United States and a resident and property taxpayer of Scottsdale in the State of Arizona. He has been a registered voter in the Cave Creek Unified School District since December 1998. He voted in the November 2000 Cave Creek Unified School District Special Election.

5. Defendant Cave Creek Unified School District #93 (the District) is a unified school district organized under the laws of the State of Arizona. A.R.S. § 15-448. The District encompasses Cave Creek, Carefree, Maricopa County, North Phoenix and Scottsdale. It is a jural entity that can sue and be sued. A.R.S. § 15-326 (1).

6. Defendant Debbi Burdick is the Superintendent of the District. She is sued in her official capacity only.

7. Defendant David Schaefer is the President of the District Governing Board. He is sued in his official capacity only.

8. Defendant Mark Warren is the Vice President of the District Governing Board. He is sued in his official capacity only.

9. Defendant Susan Clancy is a Member of the District Governing Board. She is sued in her official capacity only.

10. Defendant Casey Perkins is a Member of the District Governing Board. She is sued in her official capacity only.

11. Defendant Stephanie Reese is a Member of the District Governing Board. She is sued in her official capacity only.

12. According to the District website, Governing Board members are “elected officials who serve as the policy-making body for CCUSD The responsibility to oversee and administer programs and policies rests with the Superintendent, who is hired by the Board.”

13. Defendant Kathie Amabisca is the Director of Finance of the District. She is sued in her official capacity only.

14. According to the District website, the Finance Department is responsible for the District's budget, payroll, accounts payable, accounts receivable, purchasing, fixed assets and warehouse receiving and distribution.

15. Jurisdiction over this action, claims and parties is provided by A.R.S. §§ 12-123, 12-1801, and 12-1831.

16. Venue is proper pursuant to A.R.S. § 12-401.

Facts Common to All Claims

17. In a November 7, 2000, Special Election, the voters of the Cave Creek District approved a \$41.6 million class B bond measure.

18. Ariz. Const. art. 7, § 13 requires voters to approve all bond issues.

19. Arizona law requires school districts wishing to issue class B bonds to mail a publicity pamphlet to each voting household. The publicity pamphlet must contain, among other things, a “complete list of each proposed capital improvement that will be funded with the proceeds of the bonds.” A.R.S. § 15-491(H)(6).

20. The publicity pamphlet in the 2000 Special Election listed the purposes of the bond measure:

- Acquiring by purchase or lease school lots
- Constructing new school buildings including but not limited to two new elementary schools, one new middle school and one new high school
- Acquiring pupil transportation vehicles
- Improving school grounds, including adjacent ways thereto
- Liquidating indebtedness incurred for the purposes set forth above
- Providing all utilities and other capital items necessary for the construction of school buildings and for improving school grounds
- Paying all architectural, design, engineering, project and construction management and other costs incurred in connection with the purposes set forth above
- Paying all legal, financial and other costs in connection with issuance of the bonds

21. The first round of bonds was issued in 2001, and the last was issued in 2006.

22. According to the District’s 2010 Annual Report, \$17.9 million is still outstanding on the bonds, which will take taxpayers about 13 more years to pay back.

23. Arizona law requires a school district to repay its bonds through property taxes, and that tax must be sufficient to pay both the interest and the portion of the principal due. A.R.S. § 15-1022.

24. Plaintiffs Friedman and Bail are Cave Creek taxpayers. Their property taxes finance the repayment of the 2000 bonds.

25. Approximately \$13 million in proceeds from the 2000 bond measure remains unspent.

26. Until recently, Arizona law specifically prohibited school districts from using bond proceeds for purposes other than those approved by the voters. Prior to the passage of § 34, A.R.S. § 15-491(J) stated:

If the voters approve the issuance of school district class B bonds or impact aid revenue bonds, the school district shall not use the bond proceeds for any purposes other than the proposed capital improvements listed in the publicity pamphlet, except that up to ten per cent of the bond proceeds may be used for general capital expenses, including cost overruns of proposed capital improvements.

27. A.R.S. § 15-491(J) was the law at the time that Cave Creek District voters approved the 2000 bond measure.

28. Thus, voters expected that the proceeds from the 2000 bonds would be spent on the construction of new schools and the related projects identified in the publicity pamphlet. They were not put on notice that District Board Members could vote to spend the money for other purposes.

29. On May 11, 2010, Governor Jan Brewer signed into law § 34, which allows school board members to divert bond funds from voter-approved projects to capital improvements that have not been sanctioned by the voters. § 34 states:

Notwithstanding section 15-491, subsection J, Arizona Revised Statutes, 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 that the school district's governing board votes to authorize the proposed use of the bond proceeds prior to June 30, 2013.

2010 Ariz. Sess. Laws 332, § 34.

30. Although Defendants District Board Members understood their powers under the bond measure to be limited to spending “for a *new* school, buses, etc” (emphasis added), they instead voted to authorize the remaining \$13 million for “the *improvement* of school facilities and grounds” (emphasis added) pursuant to § 34.

31. Design work is under way for the District's renovation projects.

Count I – Contracts Clause

32. Article I, § 10, cl. 1 of the U.S. Constitution and Article II, § 25 of the Arizona Constitution prohibit laws that impair the obligations of contracts.

33. The approval of the 2000 bond measure at the November 7, 2000, Special Election created a contract between the District and the voters, which obligated Defendants to limit expenditure of the proceeds to the purposes approved by the voters.

34. Money collected from property taxes of Cave Creek taxpayers finance the repayment of the 2000 bonds.

35. The District violated its contract with the Cave Creek voters to use the bond proceeds solely for the construction of new school buildings, acquiring pupil transportation vehicles, and improving school grounds.

36. Since it authorizes school districts to use bond proceeds for purposes other than those approved by the voters at the bond election, without providing the voters with notice prior to casting their votes, § 34 violates the federal and state contracts clauses.

37. Because in acting pursuant to § 34, Defendants District Board Members voted to divert the remaining \$13 million to projects other than those approved by the voters, Defendants violated the federal and state contracts clauses.

Count II – Special Laws

38. In voting to use the proceeds from the 2000 bond measure for capital improvements that were not authorized by the voters, Defendants District Board Members acted pursuant to § 34.

39. Article IV, part 2, § 19 of the Arizona Constitution provides, “No local or special laws shall be enacted in any of the following cases,” including “(20) When a general law can be made applicable.”

40. A law that is inelastic violates the Special Law Clause. A law is inelastic when it does not allow for broader future application. In other words, the law is unconstitutional if it creates a

classification that does not permit class members to move in and out.

41. Section 34 only applies to bonds that have been passed on or before June 30, 2004. Thus, any new bonds approved after § 34's enactment are ineligible to enter the class. Section 34 is not sufficiently elastic.

42. For the reasons stated above, § 34 is an unconstitutional special law.

Request for Relief

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

A. Declare that 2010 Ariz. Sess. Laws 332 § 34 violates the contracts clauses of the state and federal constitutions and is an unconstitutional special law;

B. Declare that Defendants' decision to spend the remaining funds from the 2000 bond program on projects not covered by the purposes set forth in the CCUSD November 7, 2000, Special Election Publicity Pamphlet, violates the state and federal constitutions;

C. Permanently enjoin Defendants from entering into contracts or otherwise spending funds remaining from the 2000 bond measure on projects not listed on the CCUSD November 7, 2000, Special Election Publicity Pamphlet;

D. Award costs and attorney fees to Plaintiffs pursuant to A.R.S. §§ 12-341, 12-341.01, 12-348, and the private attorney general doctrine;

E. Award such other and additional relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 2nd day of June, 2011 by:

/s/ Christina Kohn

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ORIGINAL E-FILED this 2nd day of June, 2011, with:

Clerk of the Court
Maricopa County Superior Court
201 West Jefferson Street
Phoenix, AZ 85003

COPY MAILED and EMAILED this 2nd day of June, 2011, to:

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BY: /s/ Christina Kohn