

IN THE SUPREME COURT
STATE OF ARIZONA

ARIZONA BANKERS
ASSOCIATION,

Petitioner,

v.

JANICE K. BREWER, in her official
capacity as Governor of the State of
Arizona,

Respondent.

Supreme Court No.

**PETITION FOR SPECIAL ACTION RE
SECTION 17 OF HOUSE BILL 2008, LAWS 2009, CHAPTER 7, 49TH
LEGISLATURE, THIRD SPECIAL SESSION**

(ORAL ARGUMENT REQUESTED)

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PETITION FOR SPECIAL ACTION

Petitioner Arizona Bankers Association (the “Association”) hereby petitions this Court to determine that Section 17 of House Bill 2008, Laws 2009, Chapter 7 of the 49th Legislature, Third Special Session (“House Bill 2008”), is invalid under the Arizona Constitution for three independent reasons: (1) Section 17¹ does not relate to any of the subjects set forth in the Governor’s call for a special session that preceded House Bill 2008, as required by Article IV, Part 2, Section 3 of the Constitution; (2) House Bill 2008 encompasses a variety of unrelated subjects, in violation of Article IV, Part 2, Section 13 of the Constitution; and (3) House Bill 2008 combines unrelated appropriations and other general legislation into a single, non-general appropriations bill, in violation of Article IV, Part 2, Section 20 of the Constitution.

Petitioner thus seeks an order declaring Section 17 of House Bill 2008 unconstitutional and prohibiting Respondent Governor Janice K. Brewer from executing that section of the bill.

SUMMARY

Because the Arizona Constitution was drafted “by the people themselves, . . . to allow the Legislature to disregard it . . . would permit the exercise of a power by that body expressly withheld from it by the organic law of the state.” *McClintock v.*

¹ Section 17 restricts a secured party under a deed of trust in residential property from bringing an action for a deficiency judgment.

City of Phoenix, 24 Ariz. 155, 161, 207 P. 611, 613 (1922). In enacting House Bill 2008, the Legislature exceeded the constitutional limitations on its power in at least three ways.

First, Article IV, Part 2, Section 3 of the Arizona Constitution prohibits special session legislation that exceeds the scope of the subjects identified in the Governor's call for that special session. Here, Governor Brewer's amended call for a special session listed four subjects for consideration: (1) state budget adjustments for fiscal year 2009-2010; (2) the imposition of a temporary tax to raise revenues for education, health and human services, and public safety; (3) the appropriation or diversion of funds created by initiative or referendum; and (4) state tax reform. Section 17 of House Bill 2008 amended the statutory requirements for when a party with a secured interest in a deed of trust in certain residential property can pursue a deficiency judgment, and thus bears no relation to the four issues identified in the Governor's call.

Second, to avoid "hodgepodge" legislation and "log-rolling," Article IV, Part 2, Section 13 of the Arizona Constitution prohibits the Legislature from enacting acts that embrace more than one subject and requires that the single subject of an act be expressed in the act's title. Section 17 of House Bill 2008 shares no natural connection with the diverse array of legislation encompassed in the bill. In fact, although the Legislature referred to House Bill 2008 as an

appropriations and budget reconciliation measure in the bill’s title, many sections of the bill—including Section 17—have nothing to do with either of those two subjects.

Third, Article IV, Part 2, Section 20 of the Arizona Constitution prohibits the Legislature from combining multiple, unrelated appropriations in a single, non-general appropriations bill. House Bill 2008, however, contains multiple appropriations supporting a wide variety of unrelated state functions, including, among other things, the operating expenses of the Department of Liquor Licenses and Control and a competitive initiative fund designed to bolster scientific and medical research, not to mention the myriad of other general legislation contained in the bill.

ARIZ. R. SPEC. ACT. 7(B) STATEMENT AND JURISDICTIONAL STATEMENT

The Court has “original jurisdiction over ‘mandamus, injunction and other extraordinary writs to State officers.’” *Fairness and Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 586, 886 P.2d 1338, 1342 (1994) (citing Ariz. Const., Art. 6, § 5(1)). The Court should exercise its jurisdiction and accept this special action for three separate reasons.

First, this special action raises purely legal issues involving the constitutionality of a legislative act. The Court will decide the case through its interpretation of Article IV, Part 2, Sections 3, 13, and 20 of the Arizona

Constitution and Section 17 of House Bill 2008, and the action thus “turns solely on legal issues rather than on controverted factual issues.” *State Comp. Fund v. Symington*, 174 Ariz. 188, 192, 848 P.2d 273, 277 (1993). As such, timely resolution “would not be promoted by requiring the [Association] to proceed through the trial and appellate courts, nor are such proceedings necessary.” *Id.*; see also *Randolph v. Groscost*, 195 Ariz. 423, 425, 989 P.2d 751, 753 (1999) (accepting special action jurisdiction when action “raise[d] only issues of law, and require[d] the interpretation of a provision of the Arizona Constitution”). Indeed, the Court’s decision will terminate the action. See *Cardon v. Cotton Lane Holdings, Inc.*, 173 Ariz. 203, 210, 841 P.2d 198, 205 (1992) (exercising special action jurisdiction in deficiency judgment action when “the issue in [the] case [was] purely a question of law” and Court’s decision would “terminate[] the deficiency judgment litigation, . . . and spare[] the parties and judicial system unnecessary time and expense”). Additionally, no appellate court has analyzed the constitutionality of House Bill 2008, and the constitutional questions presented are therefore ones of first impression. See, e.g., *Fairness and Accountability in Ins. Reform*, 180 Ariz. at 586, 886 P.2d at 1342 (accepting special action jurisdiction where petition raised “a constitutional issue of first impression”).

Second, this matter raises issues of considerable public and statewide importance. Section 17 of House Bill 2008 has a wide-ranging effect over when a

secured creditor to a deed of trust can bring an action for a deficiency judgment in this state. With hundreds of thousands of deeds of trust in Arizona, and thousands of foreclosures on deeds of trust, there is an abundance of parties that may challenge the constitutionality of Section 17 of House Bill 2008 so that they may pursue a deficiency judgment. [See Decl. of Tanya Wheelless ¶ 6, attached as Appx. 1]; see also *State ex rel. McDougall v. Strohson*, 190 Ariz. 120, 121, 945 P.2d 1251, 1252 (1997) (exercising special jurisdiction over domestic violence issue that was “a matter of statewide concern” due to the thousands of domestic violence assault complaints filed each year); *Carroll v. Comm’n on Judicial Conduct*, 215 Ariz. 382, 383, 160 P.3d 1140, 1141 (2007) (exercising special action jurisdiction when case “present[ed] a legal issue of statewide importance that is likely to recur.”). And not only are questions about the constitutionality of Section 17 of House Bill 2008 likely to recur, but questions concerning the legislative practice of combining disparate subjects in one bill are even more likely to recur, whether in general bills or in bills containing appropriations or whether in regular sessions or special sessions. A decision by this Court could avoid dozens of challenges to other bills presenting similar issues and provide guidance to the Legislature as to what can and cannot be combined in one piece of legislation.

Third, the issues presented require prompt resolution. Because Section 47 of House Bill 2008 provides that Section 17 applies retroactively to September 29,

2009 and that date has now passed, trustors, trustees, and secured parties to deeds of trust in this state have a pressing need for a decision regarding the constitutionality of Section 17 of House Bill 2008, so that they may know when they may bring, or may be subject to, a deficiency judgment action.

STANDING

The Court's jurisdiction does not depend on a petitioner's standing. *See Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985) (“[S]tanding in Arizona is not a constitutional mandate since we have no counterpart to the ‘case or controversy’ requirement of the federal constitution.”). Rather, standing is a matter of prudential and judicial restraint that requires parties to “possess an interest in the outcome.” *Id.*

The Association has standing to bring this special action as the representative of its members. When an entity asserts standing in a representative capacity, the Court must determine “whether, given all the circumstances in the case, the association has a legitimate interest in an actual controversy involving its members and whether judicial economy and administration will be promoted by allowing representational appearance.” *Id.* Relevant factors for analysis include whether “(a) [the association’s] members would have standing to sue in their own right; (b) the interests which the association seeks to protect are relevant to the organization’s purpose; and (c) neither the claim asserted nor the relief requested

requires the participation of individual members.” *Id.* These factors are easily satisfied here.

The Association represents 70 banks and credit card companies holding approximately 95% of the deposits in Arizona. [Appx. 1 ¶ 4] Its members are located across the state and include state chartered and federally chartered banks and savings associations. [*Id.* ¶ 5] Most of those members hold security interests in deeds of trust in residential property. [*See id.* ¶ 6] Because Section 17 of House Bill 2008 limits the rights of secured parties to pursue deficiency judgments, the Association’s members would have standing in their own right to challenge the constitutionality of the bill.

The Association’s purpose is to serve as the collective “voice” for Arizona’s banking industry. [*Id.* ¶ 3] This purpose is “sufficiently relevant” to the Association’s efforts in this special action to protect the rights of secured parties to deeds of trust in residential property—many of which are Arizona banks—such that the Association has a “legitimate interest” in the action and “will adequately and fairly represent the interests of those of its members who would have had standing in their individual capacities.” *Armory Park*, 148 Ariz. at 6, 712 P.2d at 919.

Additionally, this special action seeks relief universal to all of the Association’s members and “requires no individual quantification by” the Court.

Id. The interests of judicial economy would therefore be “advanced by allowing the issues to be settled in a single action rather than in a multitude of individual actions.” *Id.*

STATEMENT OF THE ISSUES

The Arizona Constitution prohibits the Legislature from passing special session legislation that is unrelated to the subjects identified in the Governor’s call for that special session. Ariz. Const, Art. IV, Pt. 2, § 3. The first issue presented is whether the budgetary and tax issues identified in Governor Brewer’s call for a special session relate to Section 17 of House Bill 2008 and its amendments concerning the ability to pursue a deficiency judgment.

The Arizona Constitution also prohibits legislative acts from encompassing more than one subject and requires that this single subject be reflected in the act’s title. Ariz. Const., Art. IV, Pt. 2, § 13. The second issue presented is whether the various provisions of House Bill 2008 embrace a single subject.

The Arizona Constitution also prohibits the Legislature from combining multiple, unrelated appropriations into a single, non-general appropriations bill. Ariz. Const., Art. IV, Pt. 2, § 20. The third issue presented is whether House Bill 2008 improperly combines multiple appropriations and other general legislation that do not embrace a single subject.

STATEMENT OF THE FACTS

On July 1, 2009, Governor Brewer called a special session of the Legislature, and identified two subjects for consideration:

- “The adjustments necessary to address the state budget for the entire fiscal year 2009-2010;” and
- “Imposition of a temporary tax for the purpose of raising state revenues for primary and secondary education, health and human services and public safety expenditures.”

[A copy of the Governor’s July 1, 2009 call for a special session is attached as Appx. 2] On July 30, 2009, the Governor amended her call for a special session, and identified two additional subjects for consideration:

- “The Legislature’s power to appropriate or divert funds created by initiative or referendum;” and
- “State tax reform necessary to provide future economic growth.”

[A copy of the Governor’s July 30, 2009 amended call for special session is attached as Appx. 3]

After the Governor called the special session, the Legislature enacted House Bill 2008. [A copy of House Bill 2008 is attached as Appx. 4] House Bill 2008 contains a lengthy title, listing the various statutory provisions amended or added by the bill. [Appx. 4] However, the only descriptive language in House Bill

2008's title is the following: "MAKING APPROPRIATIONS; RELATING TO GENERAL GOVERNMENT BUDGET RECONCILIATION." [*Id.*] House Bill 2008 was signed into law on September 4, 2009. [*Id.* at 37]

Some sections of House Bill 2008 do make specific appropriations or reduce appropriations. [*Id.* § 22 at 31-32 (increasing appropriation to Arizona twenty-first century competitive initiative fund), § 25 at 32 (reducing appropriation for military installation fund), and § 38 at 36 (making appropriation to Department of Liquor Licenses and Control)] But many of the provisions in House Bill 2008 are completely unrelated to appropriations, with the bill covering such diverse topics as:

- The requirements that applicants for federal, state, or local benefits demonstrate lawful residence in the United States, [*id.* §§ 1-2 at 1-3 (amending A.R.S. § 5-101 and adding A.R.S. § 5-102)];
- Development fees assessed by municipalities or counties, [*id.* §§ 5, 8, 41 at 4-11, 36 (amending A.R.S. § 9-463.05 and A.R.S. § 11-1102)];
- A building code moratorium on residential and commercial buildings, [*id.* § 6 at 8 (adding A.R.S. § 9-805)];
- The maintenance of minimum policyholder positions by mortgage guaranty insurers, [*id.* § 9 at 11-14 (amending A.R.S. § 20-1550)];
- Reimbursement of professionals for work for the State Board of Accountancy, appointment of professionals to advise or assist the Board, and registration with the Board, [*id.* §§ 11-13 at 16-20 (amending A.R.S. §§ 32-702, -703, and -730)];

