Biggs v. Betlach

Citation: 404 P.3d 1243 (Ariz. 2017).
Date Filed: Nov. 17, 2017
Author: Chief Justice Bales
Joined by: Vice Chief Justice Pelander, and Justices Brutinel, Timmer, Gould, Lopez, and Judge Staring.*

Facts: In 2013, in response to the federal Patient Protection and Affordable Care Act ("ACA"), the Arizona legislature enacted H.B. 2010 by a simple majority vote to expand the Arizona Health Care Cost Containment System ("AHCCCS") which is Arizona's indigent health care program. Most of the increased costs are covered by federal funds, but any remaining costs are to be covered by an "assessment" from Arizona hospitals which is to be established, administered and collected by the director of AHCCCS as specified in A.R.S. § 36–2901.08(A).

Procedural history: After the governor signed the bill, a group of legislators who voted against it sought to enjoin implementation of the hospital assessment under a theory that § 36–2901.08(A) violates article 9, section 22 of the Arizona Constitution which requires a supermajority vote for acts that result in net increases in state revenue, including taxes, fees, and assessments. The superior court dismissed the case for lack of standing, but the Arizona Supreme Court reversed and remanded for further proceedings. [1]

On remand, the superior court determined that the law did not violate the Arizona Constitution because the hospital assessment is not a tax and falls within one of the specified exceptions and, therefore, only requires a simple majority to pass. The court of appeals affirmed[2] and then the Arizona Supreme Court granted review.

Issue: Is the hospital assessment specified in A.R.S. § 36–2901.08(A) a tax, assessment, or fee that requires a supermajority vote of the Arizona legislature per article 9, section 22 of the Arizona Constitution?

Holding: No, the hospital assessment is not a tax nor otherwise subject to the Arizona constitutional provision which requires a two-thirds vote in the legislature to pass acts increasing state revenues.

Disposition: The superior court's judgment is affirmed, and the court of appeals opinion vacated.

Rule: An assessment of Arizona hospitals to fund some of the costs of expanding AHCCCS is not a tax subject to the constitutional provisions requiring a supermajority vote of the legislator.

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* Justice Bolick recused himself.
1. Biggs v. Cooper *ex rel.* Cty. of Maricopa, 341 P.3d 457, 462 (Ariz. 2014).
2. Biggs v. Betlach, 392 P.3d 499, 501 (Ariz. Ct. App. 2017).

Reasoning:

- **Arizona Constitutional Language:** The court began its discussion section with an overview of the language of article 9, section 22 of the Arizona Constitution.

    1. Subsection A states that "[a]n act that provides for a net increase in state revenues, as described in subsection B is effective on the affirmative vote of two-thirds of the members of each house of the legislature."[3]
    2. Subsection B states that the supermajority vote is required for "[t]he imposition of any new tax" and "[t]he imposition of any new state fee or assessment or the authorization of any new administratively set fee."[4]
    3. Subsection C provides exceptions to the supermajority vote if the "[f]ees and assessments . . . are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency."[5]

- **Analysis of the Hospital Assessment as a Tax Per Article 9, Section 22:** The court noted that although labeled as a hospital "assessment" that it needed to consider whether the label was appropriate or whether the assessment is truly a "tax."[6] The court looked to the *May* factors, which is a three-factor test previously used in a First Amendment context to determine whether an assessment is a tax or fee.[7] The "test evaluates '(1) the entity that imposes the assessment; (2) the parties upon whom the assessment is imposed; and (3) whether the assessment is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed.'"[8] The court determined that each of the *May* factors indicates that the assessment is not a tax under article 9, section 22.

    1. For the first factor, the court determined that the director of AHCCCS is the imposing entity and not the legislature because the director "is responsible for establishing, collecting, and enforcing the assessment" and "identifies how the assessment is determined, the amount, and whether hospitals are exempted from paying anything."[9] Therefore, because the legislator is not the imposing entity this indicates it is not a tax.
    2. For the second factor, the court determined that the assessment is imposed on a narrow class, i.e. some hospitals,[10] which indicates it is not a tax.[11]

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3. ARIZ. CONST. art. 9, § 22(A).
4. *Id.* § 22(B)(1).
5. *Id.* § 22(C)(2).
6. Biggs v. Betlach, 404 P.3d 1243, 1245–46 (2017).
7. May v. McNally, 55 P.3d 768, 773–74 (Ariz. 2002).
8. *Biggs*, 404 P.3d at 1246 (quoting *May*, 55 P.3d at 773–74).
9. *Id.* at 1247.
10. The court notes that the assessment only affects some hospitals because "the director may 'establish modifications or exemptions' based on various factors, including a hospital's size, services, and location." *Id.* (quoting ARIZ. REV. STAT. ANN. § 36–2901.08(C) (2017)).
11. *Id.*

3. For the third factor, the court acknowledged that the assessment serves some public purpose in that it expands AHCCCS eligibility, but that the hospitals themselves are the primary beneficiaries which weighs against classifying the assessment as a tax.[12] Because of the AHCCCS expansion, 250,000 additional persons are covered which means that hospitals may receive payments for treating them.[13] Furthermore, because hospitals are required to provide emergency services to persons regardless of ability to pay, the expansion of AHCCCS decreases the number of uninsured persons who cannot pay.[14]

- **Analysis of the hospital assessment as an exception under article 9, section 22.** The court then went on to examine whether the assessment fell under subsection (C)(2) which exempts "[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" from the supermajority requirement.[15] The court found no dispute that the assessment is set by the AHCCCS director, so the court's analysis focuses on whether the assessment is "authorized by statute" and if it is "not prescribed by formula, amount or limit."[16] The court found the assessment was excepted from the supermajority requirement.[17]

    1. The court determined that the assessment is "authorized by statute" because the phrase is "reasonably construed as referring to fees and assessments that are statutorily authorized under the usual legislative process, that is, by a simple majority vote", and "[t]o decide otherwise would mean that an act would have to first satisfy the supermajority requirement before it could be exempted from it."[18]
    2. Finally, the court found that the assessment is "not prescribed by formula, amount or limit" because the law allows the AHCCCS director significant leeway in creating methodology for levying the assessment and only provides suggestions and a requirement that the director "present the methodology to the joint legislative budget committee for review."[19] There is no legislative preapproval of the assessment and the provisions do not rise to being a "formula, amount or limit."[20]

12. *Id.*
13. *Id.* at 1248.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 1250.
18. *Id.* at 1249.
19. *Id.* at 1250 (quoting ARIZ. REV. STAT. ANN. § 36–2901.08(D) (2017)).
20. *Id.*