

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2013-009093

04/25/2014

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT  
L. Nelson  
Deputy

STATE OF ARIZONA, et al.

KEVIN D RAY

v.

MARICOPA COUNTY COMMUNITY  
COLLEGE DISTRICT BOARD

LYNNE C ADAMS

NATHAN J FIDEL

**MINUTE ENTRY**

Courtroom ECB-511

11:04 a.m. This is the time set for Oral Argument on Defendant's Motion for Judgment on the Pleadings. Plaintiff, State of Arizona ex rel. Thomas C. Horne, is represented by counsel, Leslie Kyman Cooper and Jinju Park, with the Attorney General's Office. Defendant, Maricopa County Community College District Board, is represented by counsel, Mary O'Grady and Grace E. Rebling. Intervenors, Abel Badillo and Bibiana Vazquez, are represented by counsel, Nathan J. Fidel and Martha L. Gomez.

Court Reporter, Mike Benitez, is present and a record of the proceedings is made by audio and/or videotape.

The Court having reviewed the pleadings,

**IT IS ORDERED** denying Defendant's Motion to Strike State's Supplemental Brief.

Argument is heard on Defendant's Motion for Judgment on the Pleadings. Defense counsel states that based on A.R.S. § 15-1803(B) and 1825(A), the Attorney General does not

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have the statutory authority to bring this lawsuit. Plaintiff disagrees and argues that it does have proper authority; and additionally, the Governor, who directed the Attorney General to pursue this litigation, has the appropriate authority.

**IT IS ORDERED** taking Defendant's Motion for Judgment on the Pleading under advisement.

Discussion is held regarding Plaintiff's objection to Defendant's Expert Report of Roxana Bacon Filed in Connection with April 25, 2014 Status Conference and whether an expert is necessary. Plaintiff requests an opportunity to retain a controverting expert if the Court is inclined to allow Defendant's expert.

**IT IS FURTHER ORDERED** the Court shall review this issue and determine the necessity of an expert in this matter.

Intervenors' counsel requests that all dispositive motions be postponed until after discovery has been conducted and requests an extension of time to respond to Plaintiff, Arizona's Motion for Judgment on the Pleadings.

**IT IS FURTHER ORDERED** Intervenors' counsel may file a memorandum addressing why discovery is necessary prior to filing their response to Plaintiffs' Motion for Judgment on the Pleadings for the Court's consideration.

12:00 p.m. Hearing concludes.

**LATER:**

The Court has had under advisement Defendant Maricopa County Community College District Board's ("MCCCD") Motion for Judgment on the Pleadings. Having read and considered the briefing and having heard oral argument, the Court issues the following ruling.

Initially, the Court agrees with MCCCD that the Attorney General did not have statutory authority to initiate this action.<sup>1</sup> *See generally* A.R.S. §§ 15-1803 and -1825. Plaintiff posits that § 41-193(A)(2) gives him such authority, but "[t]hat section presupposes a properly instituted proceeding in which the State or an officer thereof 'is a party or has an interest' and does not

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<sup>1</sup> *See generally State ex rel. Woods v. Block*, 189 Ariz. 268, 272-73 (1997); *Ariz. State Land Dep't v. McFate*, 87 Ariz. 139, 141-42 (1960).

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permit the Attorney General, in the absence of specific statutory power, to initiate an original proceeding.”<sup>2</sup> *See Ariz. State Land Dep’t v. McFate*, 87 Ariz. 139, 145 (1960).

That said, the Court agrees with Plaintiff that this action was properly brought by the Attorney General on the Governor’s direction, pursuant to her authority “to take care that the laws be faithfully executed.”<sup>3</sup> *See Ariz. Const. art. V, § 4;*<sup>4</sup> *McFate*, 87 Ariz. at 148; *see also* A.R.S. § 41-193(A)(2). MCCCCD contends that “take care that the laws be faithfully executed” extends only to the Governor’s obligations to supervise and control the executive department. This contention is not supported by a plain reading of Article V, § 4, however, or the case law interpreting it. *Cf. Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 469-70 (App. 2007), *citing McFate*, 87 Ariz. at 148; *Ahearn v. Bailey*, 104 Ariz. 250, 253 (1969).

Accordingly,

**IT IS ORDERED** denying MCCCCD’s Motion for Judgment on the Pleadings.

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<sup>2</sup> A.R.S. § 41-193(A)(2) provides:

A. The department of law shall be composed of the attorney general and the subdivisions of the department created as provided in this article. Unless otherwise provided by law the department shall:

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2. At the direction of the governor or when deemed necessary by the attorney general, prosecute and defend any proceeding in a state court other than the supreme court in which the state or an officer thereof is a party or has an interest.

<sup>3</sup> *See* Feb. 19, 2014 Letter (from Governor Janice Brewer to Attorney General Tom Horne).

<sup>4</sup> Ariz. Const. art. V, § 4 provides:

The governor shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices. He shall take care that the laws be faithfully executed. He may convene the legislature in extraordinary session. He shall communicate, by message, to the legislature at every session the condition of the state, and recommend such matters as he shall deem expedient.