LEAGUE OF ARIZONA CITIES & TOWNS V. MARTIN: APPROPRIATION AT ISSUE REVEALED

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INTRODUCTION

In *League of Arizona Cities & Towns v. Martin*,[1] the Arizona Supreme Court unanimously held that a provision in the fiscal year 2008–2009 general appropriations act, requiring the cities and towns of Arizona to return $18.3 million to the state general fund, was not an appropriation.[2] Imperative to the court's conclusion was the legislature's inability to identify a specific appropriation reduced by the provision.[3] However, an extended analysis of the undisclosed source of the requested $18.3 million reveals what the court did not address: the legislature attempted to appropriate revenue that was constitutionally mandated to be spent only on a discrete number of highway-related purposes. This extended analysis reveals that although the legislature's attempt to recoup funds from Arizona cities and towns technically met the requirements of an appropriation, it explicitly contravened a separate provision of the Arizona Constitution governing the expenditure of those funds. As a secondary matter, the court held that laches did not apply to bar the claim due both to the reasonable nature of the delay and lack of prejudice.[4]

I. FACTS

On June 26, 2008, the Arizona Legislature passed the general appropriations act for the 2008–2009 fiscal year in House Bill 2209 (HB 2209).[5] Pursuant to section 47 of the act, the counties, cities, and towns of Arizona were required to deposit $29.7 million into the general fund.[6] Of the $29.7 million requested, the act required the plaintiffs (the cities and towns of Arizona) to pay

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1. 201 P.3d 517 (Ariz. 2009).
2. *Id.* at 518.
3. *Id.* at 522.
4. *Id.* at 521.
5. 2008 Ariz. Sess. Laws 1282–1337 (West Supp.).
6. *Id.*

$18.3 million.[7] Four days after Governor Janet Napolitano signed the bill into law, the fiscal year began.[8] Shortly thereafter, the League of Arizona Cities and Towns ("League") contacted the Governor's office to express concerns that section 47 violated the Arizona Constitution.[9] After numerous additional meetings with the Governor's staff, on November 14, 2008, four and one-half months later, the League filed a special action with the Arizona Supreme Court alleging that section 47 was unconstitutional.[10]

II. APPROPRIATION MEASURES IN ARIZONA

Under the Arizona Constitution, two types of appropriation measures exist: (1) general appropriations bills and (2) specific appropriations bills. The general appropriations act enacts the state budget on an annual basis and provides funding for state agencies and programs.[11] The Arizona Constitution requires that the general appropriations act "embrace *nothing but* appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt."[12] Further, the general appropriations act can include other matters that are "merely incidental and necessary" to seeing that the money is expended properly.[13] Beyond these parameters, any attempt at legislation in the act is invalid and of no effect.[14] In contrast, specific appropriations bills can contain legislation but must only cover a single subject.[15]

A. The Court's Application of the Appropriation Requirement to an Unidentified Initial Appropriation to the Cities and Towns

An appropriation is: (1) the setting aside from the public revenue a certain sum of money; (2) for a specified object; and (3) in such a manner that executive officers of the government are authorized to spend that money "and no more, for that object, and no other."[16] The operative words in the definition are the "certain sum," the "specified object," and the "authority to spend."[17] The certain sum requirement does not mandate inclusion of a specific dollar amount but merely

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7. *League of Ariz. Cities*, 201 P.3d at 518 n.1. The counties, cities, and towns were required to pay portions of the requested $29.7 million according to the Arizona Highway User Revenue Fund formula. *Id.* Although the counties were not parties to the lawsuit, they were responsible for the remaining $11.4 million. *Id.*

8. *Id.* at 519.

9. *Id.* The League first met with the Governor's staff two weeks after the passage of HB 2209. *Id.*

10. *Id.*

11. Daniel S. Strouse, *The Structure of Appropriations Legislation and the Governor's Item Veto Power: The Arizona Experience*, 36 ARIZ. L. REV. 113, 117 (1994).

12. ARIZ. CONST. art. 4, pt. 2, § 20 (emphasis added).

13. State v. Angle, 91 P.2d 705, 708 (Ariz. 1939).

14. *Id.* "[L]egislative policy making that is wholly unrelated to concomitant appropriations" cannot be included in the general appropriations act. Strouse, *supra* note 11, at 129.

15. ARIZ. CONST. art. 4, pt. 2, § 20 ("All other appropriations shall be made by separate bills, each embracing but one subject.").

16. Rios v. Symington, 833 P.2d 20, 23 (Ariz. 1992).

17. *Id.* at 24.

requires the setting aside of revenue from a "specific limited source."[18] Moreover, whether or not an appropriation was made does not depend wholly on the language expressed in the bill; rather, the overall substantive impact of the legislative action is determinative.[19]

In the general appropriations act, "[t]he setting aside of a certain sum of public revenue can occur in two ways: the legislature can authorize spending from the general fund,[20] or it can authorize payments of ascertainable amounts from a special fund."[21] Third, inherent in the power to appropriate is the power to amend an appropriation. Therefore, provisions transferring money from a previously appropriated sum to the general fund are permissible.[22]

The Arizona Supreme Court addressed the third principle in *Rios v. Symington*, which involved a "fund transfer" bill that directed various sums of money from special funds to the state's general fund.[23] The court held that the fund-transfer bill was constitutional so long as each special fund met the test for an appropriation.[24] For instance, the enabling statute for the Department of Mental Retardation Capital Investment Fund, one of the special funds at issue in the case, provided "all receipts derived from club licenses and applications therefore are appropriated to the department of mental retardation for buildings, equipment or

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18. Forty-Seventh Legislature of State v. Napolitano, 143 P.3d 1023, 1029 (Ariz. 2006); *accord Rios*, 833 P.2d at 25 (stating that a sum certain does not need to be stated in an enabling statute because the "specific amount in each special fund may be ascertained at any given time").

19. Windes v. Frohmiller, 3 P.2d 275, 276 (Ariz. 1931) ("[N]o specific language is necessary to make an appropriation, for the test is whether or not the people have expressed an intention that the money in question be paid.").

20. The state general fund is the largest fund into which Arizona tax revenues are deposited. JOINT LEGISLATIVE BUDGET COMM., 2008 TAX HANDBOOK iii (2008), *available at* http://www.azleg.gov/jlbc/08taxbook/08taxbk.pdf. The three largest revenue sources for the general fund consist of the sales tax, the corporate income tax, and the individual income tax. *Id.*

21. *Forty-Seventh Legislature*, 143 P.3d at 1028. For the purposes of this Case Note, "special fund" refers to all monies that are not federal funds or that are not a part of the general fund. For example, a special fund may consist of a statutory fund created by the legislature to accumulate licensing fees for the purpose of supporting mental retardation building expenses. *See Rios*, 833 P.2d at 24.

22. *Id.* at 26 (holding that an appropriation can be effected by transferring revenues from a statutory fund back into the general fund). "Logically, the power to appropriate includes the power to amend an appropriation . . . ." *Id.* at 28.

23. *Id.* at 21.

24. *Id.* at 26. Although one early Arizona case argued that an appropriation must consist of the general revenue of the state, Black & White Taxicab Co. v. Standard Oil Co., 218 P. 139, 145 (Ariz. 1923), the Arizona Supreme Court has since concluded that the appropriations power extends to funds raised by county taxation. Cochise County v. Dandoy, 567 P.2d 1182, 1185 (Ariz. 1977) (en banc). In line with the reasoning in *Dandoy*, the dissent in *Black & White Taxicab* argued that counties are "creatures of the state." 218 P. at 151 (Lockwood, J., dissenting). County funds are levied by state authority, authorized by the legislature, and "[do] not become the counties' money until after the legislature appropriated it to them." *Id.* One commentator agrees that money raised in or by the counties is subject to being appropriated by the state. *See* Strouse, *supra* note 11, at 122.

other capital investments."[25] The *Rios* court found this constituted an appropriation because it: "(1) specifie[d] a certain sum ('all receipts'); (2) for a specified object ('buildings, equipment or other capital investments'); and (3) create[d] an authority to spend ('all receipts . . . are appropriated')."[26] Because the initial transfer to the department met the definition of an appropriation, these funds could be appropriated to the state's general fund in the general appropriations act.[27]

However, the court in *Rios* found that where the legislature requested funds, initially delegated to the county under statute, to be returned to the state's Racketeer Influenced Corrupt Organization (RICO) account, the original transfer of funds under the statute did not meet the specifications of an appropriation.[28] The enabling statute provided that "[a]ny property, including all interests in property, forfeited to the state under this title shall be transferred as requested by the attorney for the state to the seizing agency, to the agency employing the attorney for the state or to the political subdivision bringing the action."[29] The court held that this statute did not express a "specific amount" or a "specified purpose" for the funds and was therefore not an appropriation.[30] As a result, the state could not transfer the statutory funds back into the state's RICO account because the initial transfer to the county did not meet the requirements for an appropriation. In explaining this conclusion, the court iterated that although the power to appropriate includes the power to amend an appropriation,[31] the statutory funds at issue never constituted an appropriation, and thus the legislature "merely ordered the reversion of property held by the counties on the state's behalf."[32]

Similarly, in *League of Arizona Cities & Towns*, section 47 requests a return of $18.3 million from the cities and towns to the state's general fund.[33] The court determined, in line with the reasoning in *Rios*, that section 47 did not identify

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25. ARIZ. REV. STAT. ANN. § 4-116 (1993).

26. *Rios*, 833 P.2d at 24 (quoting § 4-116).

27. *Id.* at 26. The court concluded that the fund transfer was proper, despite the fact that transfer of the department's revenues into the general fund did not itself constitute an "item[] of appropriation." *Id.* By itself, the fund transfer was not an appropriation because it "[did] not contain a grant of spending authority, much less state a specified sum of money to be devoted to a specified purpose." *Id.* However, the court concluded that this was constitutional because the legislature inherently possesses the power to reduce a previous appropriation. *Id.*

28. *Id.*

29. § 13-4315(A).

30. *Rios*, 833 P.2d at 26. The *Rios* court's analysis and conclusion that the initial transfer of statutory funds under section 13-4315 to the county was not an appropriation is arguable. *See* Strouse, *supra* note 11, at 160. The provision of "any property . . . forfeited to the state" specifies a certain sum. *See* § 13-4315(A). Moreover, the funds were created for a specified object: they could be used "for official . . . use within this state," *see* § 13-4315(A)(1), and to "pay the expenses of handling it and pay valid claims." *See* § 13-4315(A)(2). Lastly, it created the authority to spend (stating the "monies . . . may be used . . ."). *See* § 13-4315(C).

31. *Rios*, 833 P.2d at 28.

32. *Id.* at 27.

33. League of Ariz. Cities & Towns v. Martin, 201 P.3d 517, 518 n.1 (Ariz. 2009).

and reduce a provision that meets the definition of an appropriation.[34] Before a court can determine whether the legislature is appropriating money from a previously appropriated sum, it must first identify a specific appropriation that the state intends to reduce and transfer to state coffers. However, the legislature did not expressly attach the requested amount to any public revenue that it had previously set aside for the cities and towns, and thus, the court found that it did not reduce a specific previous appropriation.[35] Although the legislature attempted to identify $17.7 million of additional funding given to the Urban Revenue Sharing Fund (URSF) as a specific appropriation reduced by the act, the court found that this did not cover the full $18.3 million requirement imposed on the cities and towns.[36] Because section 47 did not reduce any identified prior appropriation, the court held that it violated the constitutional requirement that the general appropriations act include only appropriations.[37]

B. Identification of the Appropriation at Issue: An Extended Analysis

The legislature's inability to identify a specific appropriation reduced by section 47 raises the question: what was the source of the $18.3 million slated for deposit into the general fund? Although the court did not address the specific appropriation that was to be reduced, the cities and towns receive revenue from sources other than the general fund, such as the Highway User Revenue Fund (HURF).[38] This is likely the source of the funds requested by the legislature.[39]

The HURF consists of taxes such as the motor vehicle tax and other fees related to the registration and operation of motor vehicles.[40] Each fiscal year, a portion of HURF monies, not to exceed $10 million, is given to the Department of Public Safety (DPS)[41] and $1 million is given to the Economic Strength Project Fund.[42] Thereafter, the remaining monies are given to the State Highway Fund, counties, and incorporated cities and towns through a predetermined formula.[43]

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34. *Id.* at 522.
35. *Id.*
36. *Id.*
37. *Id.*
38. *See* ARIZ. REV. STAT. ANN. § 28-6538(A)(1)–(4) (2008).
39. Section 47 hints that the legislature was effectively attempting to appropriate HURF money back to the general fund because the bill calls for the return of $18.3 million to the general fund according to the HURF formula. 2008 Ariz. Sess. Laws 1335–36 (West Supp.). The HURF collections totaled approximately $1.34 billion in fiscal year 2007–2008. JOINT LEGISLATIVE BUDGET COMM., *supra* note 20, at 163. After statutory distributions, the cities and towns received approximately $404.4 million. *Id.* at 165. Presuming similar funds for fiscal year 2008–2009, the cities and towns received an amount well in excess of the $18.3 million requested by the legislature.
40. JOINT LEGISLATIVE BUDGET COMM., *supra* note 20, at 163.
41. § 28-6537(4).
42. § 28-6534.
43. § 28-6538(A)(1)–(4). The HURF calls for the distribution of the balance of the revenue, after previous distributions to the Economic Strength Project Fund and the Department of Public Safety, as follows: 19% to counties, 27.5% to incorporated cities and towns, and 3% to incorporated cities with a population greater than 300,000. JOINT

HURF revenues are a major source of funding for state highway administration and infrastructure.[44]

Section 47's attempt to re-appropriate HURF funds back into the general fund parallels the facts presented in *Rios*. Section 47, similar to *Rios*, involves a request from the legislature to transfer revenues from a special fund, authorized by state statute, to the general fund.[45] *Rios* conclusively established that the legislature can redistribute funds from a statutory fund back to the general fund because such a power "logically" flows from the legislature's power to appropriate.[46] Thus, transfer of HURF funds back to the general fund is constitutional under the *Rios* analysis despite the fact that section 47 imposed no spending authority on the general fund, nor designated the transferred funds for a "specified purpose."[47] Rather, the legislature maintains the power to reduce a previous appropriation, as long as the initial distribution of revenue meets the definition of an appropriation.

The question, then, is whether the original transfer from the HURF to the cities and towns meets the definition of an appropriation. Contrary to the conclusion that the court reached based on the inability of the legislature to identify funding that it wished to reduce, an analysis of the HURF reveals that its distribution to the cities and towns is, in fact, an appropriation. The HURF identifies a "certain sum" of money to be distributed to the cities, counties, and towns through a predetermined formula ("all fees, penalties, and fines"), for a "specified object" ("shall only be spent for the purposes prescribed"), and creates an authority to spend this money for a specified purpose ("shall [] be spent").[48]

Although money allocated from the HURF to the cities and towns would meet the requirement of an appropriation, and could be transferred by the legislature into the general fund under Article 4 of the Constitution, redistribution of these funds to the general fund is contrary to the plain language of Article 9 of the Arizona Constitution.[49] Article 9 expressly allocates HURF funds for highway construction, maintenance, improvements, and other highway-related expenditures, stating "counties, incorporated cities and towns [are authorized to use HURF

LEGISLATIVE BUDGET COMM., *supra* note 20, at 164. In fiscal year 2007–2008, the cities and towns received $ 404.4 million dollars from the HURF. *Id.* at 165.

44. *See* ARIZ. CONST. art. 9, § 14.

45. *Cf.* Rios v. Symington, 833 P.2d 20, 21 (Ariz. 1992).

46. *Id.* at 26.

47. *See id.* at 23.

48. *See* ARIZ. REV. STAT. ANN. § 28-6533(B) (2000). "That the Legislature has created a special fund to meet a specified object means, quite literally, that it has made an appropriation." *Rios*, 833 P.2d at 25.

49. *See* ARIZ. CONST. art. 9, § 14. At first blush, redistribution of HURF tax revenue to the general fund for undisclosed purposes would also seem to violate Article 9, Section 3 of the Constitution, which provides that taxes are only to be expended for their intended purpose. *See id.* § 3. However, this requirement is not applicable to excise taxes, such as gasoline taxes, which are at issue under the HURF. *See* Hunt v. Callaghan, 257 P. 648, 656 (Ariz. 1927). Although the HURF is also comprised of license tax revenues, such as excess-weight-violation-penalty revenues and state lottery revenues that could conceivably be subject to this constitutional provision, *see* 1985 Ariz. Op. Att'y Gen. 88 (1985), an analysis of this issue is beyond the scope of this Case Note.

funds] solely for highway and street purposes."[50] The legislature cannot argue that it intended to utilize these funds to offset the state budget for highway-related purposes, because the legislature only allocated approximately $80,000 for these purposes in its 2008–2009 fiscal budget.[51] It thus appears the legislature attempted to bypass the constitutional provision by requiring the cities and towns to return a portion of their HURF appropriations to the general fund.[52]

C. Policy Implications

Section 47 inhibits the transparency of the budget process. This provision, if implemented, would have enabled the state's general fund to access revenue constitutionally mandated to the cities and towns for highway-related purposes. Justice Bales echoed these concerns when he stated that the court's decision "promotes accountability and transparency in the state's budgeting process."[53] Governor Jan Brewer, indicating her agreement with the ruling, stated that section 47 "appears to be the latest example of unsound and improper budget management decisions that have contributed significantly to state budget impacts being felt throughout Arizona."[54]

The legislature could have avoided the court's disapproval of its attempt to procure city and town funds had it merely taken a different approach. For instance, the legislature repeatedly overrides the HURF revenue formula by allocating increased amounts to DPS during budget crises, leaving the cities, counties, and towns the reduced remainder.[55] In fact, the legislature gave DPS $89 million from the HURF for fiscal year 2008–2009,[56] effectively overriding the

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50. ARIZ. CONST. art. 9, § 14. Such a constitutional provision did not govern the special funds at issue in *Rios*. *See generally Rios*, 833 P.2d 20. The Arizona Attorney General similarly argued that HURF funds cannot be transferred to the *county* general fund due to Article 9, Section 14 limitations on their expenditure. 1985 Ariz. Op. Att'y. Gen. 88 (1985). Moreover, although Article 9, Section 11 of the Arizona Constitution provides that license tax revenues are not subject to the spending mandate of Section 14, Section 11 provides that expenditure of license taxes are to be determined through statute. *Id.* Current statutes mandate usage of license tax revenues only for highway-related purposes, *id.*, thus precluding transfer of any HURF funds to either county or state general funds.

51. *See* JOINT LEGISLATIVE BUDGET COMM., FY 2009 APPROPRIATIONS REPORT 395 (2008), *available at* http://www.azleg.gov/jlbc/09app/dotsumm.pdf.

52. The legislature bypasses spending restrictions in other places as well. The Disproportionate Share Program is a federal program designed to "pass through federal and state dollars to hospitals that serve a disproportionate share of low-income and Medicaid patients." JOINT LEGISLATIVE BUDGET COMM., PAYMENTS TO HOSPITALS 1 (2007), http://www.azleg.gov/jlbc/psaxspayhosp.pdf. However, the legislature recoups a portion of the money provided to public hospitals by withholding the relevant county's transaction privilege tax collections. *Id.*

53. League of Ariz. Cities & Towns v. Martin, 201 P.3d 517, 523 (Ariz. 2009) (Bales, J., concurring).

54. MSN Money, *Arizona Court Overturns Budget Payment Requirements*, Feb. 3, 2009, http://news.moneycentral.msn.com/provider/providerarticle.aspx?feed=AP&date=20090203&id=9573970.

55. *See* JOINT LEGISLATIVE BUDGET COMM., *supra* note 20, at 164.

56. JOINT LEGISLATIVE BUDGET COMM., FY 2009 JLBC BASELINE SUMMARY 15 (2008), *available at* http://www.azleg.gov/jlbc/10summ/summbktoc.pdf.

statutory maximum of $10 million.[57] Thus, the legislature could have allocated additional funds to DPS in an attempt to balance the state's budget.

Although the court ultimately reached the same conclusion as this Case Note—that section 47 contravened the Arizona Constitution (albeit on the basis of different provisions)—the court did so without identifying the specific funds at issue. The court's failure to identify the initial appropriation to the cities and towns was based primarily on the legislature's inability to identify the appropriation at issue. An extended analysis of the source of the funds reveals that although the HURF is an appropriation under traditional case precedent, the fund transfer requested by section 47 directly conflicts with Article 9 governing the expenditure of those funds. Therefore, although the legislature maintains the ability to request a reduction of a previously appropriated sum where the initial transfer was an "appropriation," HURF funds can only be used for highway-related expenditures and basic infrastructure.

III. LACHES

The equitable doctrine of laches is a counterpart to the statute of limitations, designed to discourage dilatory conduct.[58] A claim is considered unenforceable under the doctrine of laches where, "under the totality of the circumstances, the claim, by reason of delay in prosecution, would produce an unjust result."[59] The requirements for laches to bar a claim are twofold: (1) the delay must be unreasonable and (2) the delay must result in prejudice to the opposing party.[60] The unreasonableness of the delay is determined by the justifications offered by the plaintiff, as well as the extent of advance knowledge of the basis for the challenge.[61] Here, the court ultimately found that laches did not bar the League's claim because the delay was neither unreasonable nor resulted in prejudice to the parties involved.[62] The court then accepted review under special-action jurisdiction.[63]

A. Unreasonableness of the Delay

The court found that the League's four-month delay was not unreasonable because, at the time the petition was filed, more than seven months remained in the fiscal year before the payment of the $18.3 million was due, and by the time the court rendered a decision, nearly five months still remained.[64] This provided the legislature with ample time to make the necessary adjustments in its annual

57. ARIZ. REV. STAT. ANN. § 28-6537 (2008). The HURF should distribute no more than $10 million to DPS after the year 2000. *Id.*

58. Harris v. Purcell, 973 P.2d 1166, 1167 n.2 (Ariz. 1998).

59. *Id.*

60. Flynn v. Rogers, 834 P.2d 148, 152 (Ariz. 1992) (stating that laches is applicable "where, because of delay or lapse of time, the party asserting the defense is either injured (by the mere lapse of time) or changes his position in reliance on the other party's inaction").

61. Mathieu v. Mahoney, 851 P.2d 81, 85 (Ariz. 1993).

62. League of Ariz. Cities & Towns v. Martin, 201 P.3d 517, 521 (Ariz. 2009).

63. *Id.* at 519.

64. *Id.* at 520.

budget. Moreover, the court noted that prior cases typically applied laches to last-minute challenges to ballot propositions filed shortly before impending print deadlines.[65] Here, however, the League did not wait until an imminent deadline approached to file its special action.[66]

Conspicuously missing from the court's analysis was a determination of the League's advance knowledge of the basis for the challenge, which is an important factor in the determination of unreasonableness.[67] The League had knowledge of the unconstitutional nature of section 47 as much as two weeks after the appropriations bill was signed into law by the Governor. The League finally filed suit four months later. However, the delay was arguably reasonable as the League was participating in numerous negotiations and conferences with the Governor throughout this time period.[68]

The court applied this prong of the laches test consistently with case precedent, finding that the League's delay was not unreasonable. In reaching this conclusion, the court distinguished the reasonable dilatory conduct present here with unreasonable delays occurring in election cases, which were typically characterized by eleventh-hour suits initiated mere days before print deadlines.

B. Prejudice

Moreover, the court found that the League's delay did not prejudice the defendants because it caused no substantial harm.[69] The state budget deficit was reportedly around $1.6 billion, weakening any argument that the $18 million requested was necessary to balance the budget.[70] Additionally, the Governor was on notice of the League's concerns over the bill and failed to call a special session of the legislature to address alternate sources of revenue.[71] Even after the Governor filed a request for special action, and after the increasing budget deficit came to light, the Governor failed to find a solution to the budgetary problems. Vice Chief

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65. *Id.*; *see also* Sotomayor v. Burns, 13 P.3d 1198, 1200 (Ariz. 2000) (finding that delay was unreasonable where plaintiff filed a special action one day before a publicity pamphlet was to be printed); *Mathieu*, 851 P.2d at 85 (finding that where plaintiff waited until mere days before the absentee ballots were to be printed to bring suit it was unreasonable and laches applied to bar the claim).

66. *League of Ariz. Cities*, 201 P.3d at 520.

67. *See Mathieu*, 851 P.2d at 84.

68. *See* RESTATEMENT (SECOND) OF TORTS § 939 cmt. b (1977). In defining "reasonable delay," the court can take into account time for investigation as well as "protests, complaints and negotiations looking toward a settlement of the controversy." *Id.*; *see also* Burke v. Voicestream Wireless Corp. II, 87 P.3d 81, 88 (Ariz. Ct. App. 2004) (quoting McComb v. Superior Court, 943 P.2d 878, 886 (Ariz. Ct. App. 1997)) (finding laches does not require that the plaintiff file a lawsuit as the first course of action); *McComb*, 943 P.2d at 885 (finding laches did not apply to a delay of five months in filing a complaint where the delay was reasonable because plaintiffs had been pursuing non-judicial solutions).

69. *League of Ariz. Cities*, 201 P.3d at 520.

70. *Id.* When the counties' share of the contribution is considered, the total amount requested by the legislature totals $29.7 million. 2008 Ariz. Sess. Laws 1335–36 (West Supp.).

71. *League of Ariz. Cities*, 201 P.3d at 520.

Justice Berch stated, "if a special session was not called during that time to resolve a $1.6 billion deficit it seems unlikely one would have been called to find an alternate source for funding the $18.3 million payment at issue here."[72]

An alternative remedy, the court found, also undermined the Governor's claim of prejudice. The cities and towns receive payments from the state through the URSF. At the time the court came out with its decision, the URSF still contained several months' worth of appropriated monies that had not yet been distributed to the cities and towns, which the legislature could have suspended, reduced, or eliminated.[73]

However, despite the court's argument to the contrary, there seems to be ample evidence of prejudice. A special session was, in fact, initiated to enact budget cuts to the fiscal year 2008–2009 budget on January 28, 2009, six days before the case was decided.[74] This substantially weakens this portion of the decision and indicates that the League's delay in filing suit exacerbated the already precarious budget situation, necessitating that the state find alternate sources of revenue to replace the amount requested by the legislature.

Moreover, in the election context, courts have applied laches where electoral suits were filed before election but so close as to disrupt the candidates, the voters, or the electoral process.[75] Similarly, delays in filing suit against the legislature disrupt the budgeting process and the allocation of funds that are necessary to run the state. The delay in filing suit over an appropriations bill halfway into the fiscal year likely resulted in monetary constraints on the state: the legislature committed resources and made irrevocable decisions based on the assumption that section 47 would provide an additional $29.7 million to balance the state budget. Ultimately, although the court agreed that "litigants and lawyers involved in [public] litigation must be keenly aware of the need to bring such cases with all deliberate speed or else the quality of judicial decision making is seriously compromised," the court found that the League's delay was neither unreasonable nor caused prejudice to the state's budget process.[76]

In *League of Arizona Cities & Towns*, the court expanded traditional case precedent that applied laches primarily to election and ballot issues to legislative appropriations. Although the court stated that in some instances a delay of four months could be unreasonable, it found no prejudice that would mandate application of laches. However, the court did not foreclose the possibility of using laches in the future to bar similar claims against the government.

72. *Id.*

73. *Id.*

74. Proclamation by the Governor of Arizona Calling a Special Session for the 49th Legislature of the State (Jan. 28, 2009), *available at* http://azgovernor.gov/dms/upload/PROC_012909_SDOC4424.pdf.

75. *See, e.g.*, Mathieu v. Mahoney, 851 P.2d 81, 85–86 (Ariz. 1993) (finding that the real prejudice caused by delay in election cases is the quality of decision-making in matters of great public importance).

76. *League of Ariz. Cities*, 201 P.3d at 521.

CONCLUSION

The Arizona Supreme Court, in *League of Arizona Cities & Towns v. Martin*, was forced by the legislature to employ a generalized approach to the question of whether section 47's fund transfer met the constitutional requirements of an appropriation. However, an extended analysis reveals that while the HURF funds indirectly requested by the legislature technically comply with appropriation requirements, they directly conflict with a separate constitutional provision governing expenditure of those funds. Although the legislature maintains the ability to request a reduction of a previously appropriated sum where the initial transfer was an "appropriation," HURF funds can only be used for highway-related expenditures and basic infrastructure. As a secondary matter, the court distinguished previous laches cases dealing with delay in filing election suits from the League's four-month delay in the appropriations context, finding that neither delay nor prejudice were present, and thus laches was inapplicable.

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