



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



ROBERT BURNS v. ARIZONA PUBLIC SERVICE COMPANY, et al.
CV-21-0080-PR

PARTIES:

Petitioner: Robert Burns

Respondents: Arizona Public Service Company, Pinnacle West Capital Corporation, Donald Brandt, Arizona Corporation Commission, Commissioner Boyd Dunn

FACTS:

Burns was serving as a commissioner on the Arizona Corporation Commission (“the Commission”), and began investigating anonymous campaign contributions made to other Commission candidates in 2014. He believed that Pinnacle West Capital Corporation (“Pinnacle West”), a non-regulated affiliate of Arizona Public Service Company (“APS”), was the source of the contributions. APS is a public service corporation (“PSC”) and is regulated by the Commission. In November 2015, Burns requested that APS provide “a full report of all spending related in any way to the 2014 election cycle....” APS did not provide a report satisfactory to Burns.

In May 2016, Attorney General Brnovich provided guidance on the authority of the Commission or individual commissioners to obtain information from a PSC and its affiliates. The AG Opinion concluded that “pursuant to Section 40-241, an individual Commissioner may gather information regarding a PSC’s political and charitable contributions, and lobbying expenditures” The Opinion further opined that the statute’s plain language “confers power on individual Commissioners, not just the Commission as a whole”

Later, Burns attempted to obtain information about contributions made to Commission candidates in 2016, and issued subpoenas seeking information relating to whether APS or its affiliate used ratepayer funds for political, charitable, or other purposes for the years 2011 through 2016. In 2017 he sought similar information from APS in conjunction with a Commission proceeding, and again, he did not receive the information he was looking for.

In March 2017, Burns sued APS and Pinnacle West for declaratory relief, asking the Superior Court to declare that he was authorized to demand compliance with the subpoenas without the approval of other commissioners. Burns then sought to compel APS to comply with the subpoenas in a Commission proceeding, but the four other commissioners voted to deny Burns’s motions in June 2017. They concluded that (1) the information Burns sought was not relevant to the pending Commission proceeding; (2) the subpoenas he issued were overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence; and (3) Burns’s requests for witness interviews were for irrelevant information and were not reasonably calculated to lead to the discovery of admissible evidence.

Burns then sought leave to amend his Superior Court complaint to add the Commission and his fellow commissioners as defendants and to challenge the June 2017 order. The Superior Court granted leave to amend, and Burns filed a First Amended Complaint. The Superior Court ruled that Burns had the authority to issue the subpoenas but could not unilaterally enforce the subpoenas because such authority rested solely with the Commission. The Superior Court reasoned that it “could not overrule the decision of a majority of the Commission about the proper scope of [a Commission] investigation without running afoul of the ‘separation of powers’ principles that are at the heart of our system of government.” Burns sought leave to amend the complaint, and APS and the other commissioners objected and filed motions to dismiss.

In January 2019, the Superior Court granted the motions to dismiss and entered judgment against Burns, concluding that he “lack[ed] standing to assert the due process rights of litigants to an unbiased adjudicative process” and “no other constitutional or statutory authority entitle[d] him to initiate and maintain an investigation into potential grounds for disqualification of his fellow Commission members.” Burns appealed. The Court of Appeals ruled in the Opinion below that, although individual commissioners have the power to issue subpoenas, such power is not without limits when exercised as part of Commission proceedings and is instead subject to review and oversight by the Commission as a whole. Burns then filed a Petition for Review to the Arizona Supreme Court, which granted review of the two issues listed below.

[Note: Ariz. Const. art. XV, § 4, provides:

“The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state.”]

ISSUES:

1. “Whether the Arizona Constitution allows a majority of ACC commissioners to prevent any single commissioner from exercising the investigatory powers that are expressly delegated to them in Ariz. Const., art. XV, § 4.”
2. “Whether the Arizona Uniform Declaratory Judgment Act at A.R.S. § 12-1831, et seq. grants an ACC commissioner standing to seek a declaration of their rights and their fellow commissioners’ rights.”

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