

## Goldwater Institute seeks to overturn impact-fee ruling

by [Gary Nelson](#) - Jan. 4, 2011 12:00 AM  
 The Arizona Republic

The Goldwater Institute is asking the state Supreme Court to overturn a November Court of Appeals ruling that validated Mesa's practice of assessing new-home buyers a fee that is used to enhance the city's museums and cultural programs.

The Appeals Court committed a "serious legal error," Goldwater attorney Clint Bolick's appeal said, "setting a dangerous and potentially far-reaching precedent for future judicial inquiries into local-government authority."

Goldwater, a libertarian-leaning think tank and advocacy group based in Phoenix, believes cultural facilities are not among the "necessary public services" for which the Legislature allows impact fees.

In the spring of 2007, Mesa sharply increased its impact fees, raising the cost on a new house to \$8,532, broken down into separate pots of money for various city services. The cultural portion of that is \$218.

Goldwater sued the city in September 2007, on behalf of the Home Builders Association of Central Arizona. Arguments to the Appeals Court last summer focused on the definition of necessary, with Bolick arguing that that word must be construed narrowly.

The Appeals Court said that because necessary public services is not defined in state law, "we must determine its meaning."

And, "in the absence of specific direction from the Legislature, we construe the term necessary public services broadly," the court said. " 'Necessary' is an elastic term that can be applied on a case-by-case basis to the needs of the individual communities."

Bolick attacked the court's assertion that just because a city has historically provided a service, the city can then define the service as necessary.

And he said the cultural impact fees impose an unfair burden on new-home buyers to cover costs that should be borne by all the city's taxpayers.

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