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NCLA Challenges Woefully Inadequate Probable-Cause Standard in Arizona Child Safety Case

Phillip B. v. Mike Faust, in his official capacity as Director, and the Arizona Department of Child Safety

Washington, DC (February 3, 2020) – The New Civil Liberties Alliance is asking the state Superior Court of Maricopa County to reverse an unjust decision by the Arizona Department of Child Safety (DCS) that overturned an independent administrative law judge’s (ALJ) ruling and wrongfully placed an innocent man on the Arizona Central Registry of child abusers for 25 years. Legal actions by the former Director of DCS and a state law that permits such draconian penalties on a mere showing of ‘probable cause’ are among the factors to blame for this injustice.

In the appellant’s opening brief, NCLA exposes several problems in the DCS process that merit review, including the low burden of proof (“probable cause”) DCS has to meet, the inability of defendants to cross-examine witnesses, and the DCS Director’s ability to reverse the independent ALJ’s findings and act as prosecutor, judge, and jury in deciding the fate of the accused. NCLA believes that these defects deprived our client Mr. B. of liberty without due process of law in violation of the Arizona Constitution and the U.S. Constitution.

Mr. B. (whose name has been redacted to preserve his anonymity) had enjoyed an untarnished career working as a coach, teacher and professional supervisor at group homes for troubled teens until the morning of June 28, 2018. That day a 15-year-old living in the group home supervised by Mr. B. fabricated accusations against him of “inappropriate restraint” of a 13-year-old teen resident who became disgruntled when asked to do his chores. According to the record, Mr. B. “placed his hand on the boy’s shoulder and admonished him to calm down” after the troubled teen became distressed.

After a two-day trial, at which the independent ALJ credited eyewitness testimony from Mr. B and from the only other adult present at the scene, DCS failed to convince the tribunal that probable cause existed to place Mr. B. on the Arizona Central Registry. The ALJ, therefore, cleared Mr. B. of the charge.

The remarkable series of events that occurred following the ALJ’s decision is nothing short of unconstitutional.

Despite the ALJ’s conclusion, state law allowed DCS to appeal the decision to then-DCS Director Gregory McKay. He proceeded to reverse the decision, deleted the ALJ’s findings of fact and credibility determinations, and ordered Mr. B’s name to be placed on the Central Registry for 25 years. Without court intervention to correct this gross abuse of power, it will destroy Mr. B’s reputation and career.

NCLA released the following statements:

“An Executive Branch political appointee should not be able to ‘delete’ facts found after a full trial by an independent judge. But that’s what former DCS Director McKay did. Hopefully, the state court will recognize the glaring due process and distribution of powers problems instead of giving deference to DCS’s decision.” —**Adi Dynar, Litigation Counsel, NCLA**

“What has happened to Philip B. is horrible. But the greater tragedy is that Arizona’s entire system for placing adults on the Central Registry for child abusers is fraught with due process violations. The state and federal constitutions dictate that decisions of this magnitude cannot be made without careful attention to the rights of the accused.” —**Mark Chenoweth, Executive Director and General Counsel, NCLA**

ABOUT NCLA

NCLA is a nonprofit civil rights organization founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other *pro bono* advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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