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## **AZ Trial Court Refuses to Decide Constitutionality of Dep't of Child Safety's Admin. Review Scheme**

*Phillip B. v. Mike Faust and Arizona Department of Child Safety*

**Washington, DC (September 9, 2020)** –In a disappointing turn of events, a Maricopa County Superior Court judge today [affirmed](#) the decision of the director of the Arizona Department of Child Safety (DCS) concerning an unproven child-abuse allegation in the case *Phillip B. v. Mike Faust and Arizona Department of Child Safety*.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents Mr. Phillip B., whose name has been redacted to preserve his anonymity under court rules. Mr. B. is an educator with decades of experience and an untarnished reputation, that is, until he was falsely accused by a teen in his care.

NCLA [exposed](#) several constitutional problems in the DCS process that deprived Mr. B. of liberty without due process of law under the U.S. and Arizona Constitutions as well as the separation-of-powers doctrine under the Arizona Constitution.

But in his order, Judge Douglas Gerlach said today that he will not decide the constitutionality of the administrative review scheme that the legislature put in place. One of the most dubious provisions is the ability of agency heads to reject or modify the decisions of ALJs. Independent ALJ decisions that respect due process and rules of evidence can be overturned by biased agency heads who ignore rules of civil procedure and evidence. This practice violates the due process rights of defendants.

In Mr. B's case, the ALJ from the Office of Administrative Hearings, which is independent of DCS, concluded that probable cause did not exist to support a finding of abuse and cleared him of the charge. Despite the ALJ's conclusion, state law allowed DCS to appeal the decision to its own director. Unsurprisingly, the director ruled in favor of his agency, rejecting the ALJ's factual and credibility assessments and ordering that Mr. B's name be placed on the Arizona Department of Child Safety Central Registry of child abusers for 25 years.

Unfortunately, the court today also refused to meaningfully review the constitutionality of Arizona's administrative review scheme. In effect, the judge refused to clean up the due process mess that is DCS's Central Registry, leaving the cleanup either to the legislature or to the Court of Appeals.

NCLA is fighting to right this wrong. Just last month, the Arizona Supreme Court adopted verbatim an [NCLA-drafted](#) amendment to its Judicial Review of Administrative Decisions Rule 3 ("JRAD Rule 3"). The new rule, which goes into effect starting January 1, 2021, affects all appeals from the final decisions of all Arizona state agencies that are required to go to the Superior Court—including DCS.

NCLA, on behalf of Mr. Phillip B., will appeal today's decision to the Arizona Court of Appeals, Division One.

**NCLA released the following statement:**

“The court’s decision is doubly disappointing. The court decided not to review the myriad due-process and separation-of-powers problems for factual reasons. At the same time, the court decided not to take a look at the facts to avoid the serious legal problems with Arizona’s administrative law. The court’s double-dodge offers an enticing recipe for appeal, and that is precisely what we plan to do.”

— **Adi Dynar, Litigation Counsel, NCLA**

Read more case background [here](#). Watch case video [here](#).

**ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group 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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