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NCLA Appeal Challenges AZ Dept. of Child Safety’s Low Burden of Proof and Lack of Due Process

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

Washington, DC (December 29, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit, civil rights group has [appealed](#) the [decision](#) of a Maricopa County Superior Court judge in the case of *Phillip B. v. Mike Faust and Arizona Department of Child Safety* to the Arizona Court of Appeals, Division One. NCLA contends the administrative review system in place at the Arizona Department of Child Safety (DCS), which allows the agency’s head to reject or modify the decisions of independent ALJs, is unconstitutional. NCLA further argues that in reviewing those actions the Superior Court must not defer to the DCS Director’s factual or legal findings and should instead uphold the ALJ’s decision or else provide the accused a new trial using a clear-and-convincing evidence (or at least preponderance of the evidence) standard of proof.

In the case of NCLA client Phillip B., the DCS Director “deleted” facts the Administrative Law Judge had found based on sworn, live testimony and cross-examination. Instead, the Director substituted his own one-sided “facts” based on unsworn interviews and hearsay. Such power to rewrite the administrative record ought to be unconstitutional.

In its appeal, NCLA argues that DCS’s low standard of proof (probable cause) and lenient standard of administrative record review (substantial evidence) deprived Phillip B. of due process of law under the Arizona and U.S. constitutions. In this case, an independent ALJ heard all the evidence and concluded that probable cause did not exist to show that Mr. B. abused a troubled teen in his care at a group home. But state law allowed DCS to appeal the decision to its own director, who then ruled in favor of his own agency, rejecting the neutral ALJ’s factual findings and credibility assessments. As a result, Mr. B.’s name, which has been redacted here to preserve his anonymity, has been placed on the Arizona Department of Child Safety Central Registry for 25 years—a decision that cost him his job and prevents him from working in most or all jobs working with youth.

ALJs in the AZ Office of Administrative Hearings follow rules of evidence and civil procedure that are designed to protect all litigants’ due process rights. Witnesses testify in person under oath and are cross-examined in an ALJ’s presence. ALJs weigh all the testimony presented to them and make factual and credibility findings. But the Superior Court’s ruling empowers agency heads to ignore rules of evidence and civil procedure and overturn the factual findings of ALJs. In addition to denying due process to the accused, this flawed procedure also violates the Arizona Constitution’s separation-of-powers doctrine. Agencies should not be allowed to investigate and prosecute Arizonans, and then act as the judge and jury in administrative cases. The Court should reverse the decision and order Mr. B.’s name to be removed from the Central Registry.

NCLA released the following statement:

“As the neutral factfinder found, no probable cause supports this allegation against Phillip B. DCS’s haste in adding people to the Central Registry has laid waste to some of Arizonans’ most cherished constitutional

protections. Even, or perhaps especially, when child abuse allegations are involved, due process dictates DCS and the courts must assume people are innocent until proven otherwise.”

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

For more information about this case visit [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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