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In NCLA Amicus Win, Arizona Supreme Court Rejects Agency Deference in Ratemaking Lawsuit

Sun City Home Owners Association v. Arizona Corporation Commission, et al.

Washington, DC (October 1, 2021) – Today, a unanimous Supreme Court of the State of Arizona [ruled](#) that the Arizona Corporation Commission (ACC) is “not entitled to ‘extreme deference’ in its utility ratemaking determinations.” The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in April 2021, in support of Petitioners in *Sun City Home Owners Association v. Arizona Corporation Commission*. NCLA argued that the Arizona Supreme Court should interpret the statutory or regulatory texts rather than deferring to the interpretation of an administrative agency in deciding whether the agency violated the Arizona Constitution’s prohibition against discriminatory rates.

ACC provided individual wastewater service rates to five separate wastewater districts within the Phoenix Metropolitan area. ACC would later consolidate these districts and apply a flat wastewater rate for all customers in the new district, an action challenged by customers in the rate discrimination lawsuit. The Arizona Court of Appeals upheld ACC’s decision, reasoning that ratemaking is a function entrusted to the commission by the Arizona Constitution. The Arizona Court of Appeals erred by going so far as to grant “extreme deference” to ACC, which conflicts with both the state and federal constitutions.

The deferential standard the Arizona Court of Appeals applied to ACC requires far more than respectful consideration of ACC’s views; it commanded judges to give weight to those views simply because ACC espouses them, and it instructed judges to subordinate their own judgments to the views preferred by ACC.

Justice Clint Bolick, writing the opinion of the court, stated, “Because the court of appeals attributed the extreme deference requirement to decisions from this Court, ... we take the opportunity to clarify a court’s role in holding the Commission to its constitutional boundaries.” Justice Bolick rejected the Court of Appeals’ application of deference, reasoning, “as to issues of constitutional and statutory compliance—here, whether the Commission caused unlawful rate discrimination—we do not defer to the Commission’s judgment. Our review of such questions is de novo.”

Agency deference requires judges to abandon their duty of independent judgment and violates the Due Process Clauses of the Arizona Constitution and the Fourteenth Amendment of the U.S. Constitution. NCLA commends the Court for fulfilling its fundamental duty and protecting the due process of law for all litigants by denouncing deference to agency interpretations and ensuring that judges will not defer to the legal interpretation of one of the parties before the Court.

NCLA released the following statement:

“It is high time that the ACC be held accountable to the Arizona Constitution. Like all Arizonans and the state agencies that serve them, when ACC appears before Arizona courts, it is an ordinary litigant that must follow the

rule of law. The Arizona Supreme Court does not owe ACC any special consideration that it does not owe every other litigant.”

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

For more information about this case visit [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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