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NCLA Victory! AZ Appeals Court Rules DCS Dir. Cannot Unilaterally Add Name to Abuse Registry

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

Washington, DC (June 14, 2022) – Today, a three-judge panel of the Arizona Court of Appeals [ordered](#) the removal of New Civil Liberties Alliance client Phillip B.’s name from the Arizona Department of Child Safety (DCS) Central Registry of substantiated findings of child abuse. DCS’s then-Director had ‘deleted’ factual findings and credibility determinations made by an independent administrative law judge (ALJ) who took live testimony in the case. DCS thereby unjustly destroyed Phillip B.’s reputation and career. In a decision that vindicates Phillip B. (whose name has been redacted to preserve his anonymity under court rules), the Arizona Court of Appeals held: “Because [the DCS] Director’s Decision here does not meet the regulatory requirements for a substantiated finding, there is no legal authority for the Director to enter Phillip B.’s name into the Registry.”

NCLA, a nonpartisan, nonprofit civil rights group, challenged DCS’s decision in *Phillip B. v. Arizona Department of Child Safety, et al.* NCLA raised several statutory concerns with DCS’s handling of the case. NCLA also exposed several problems in the DCS process that merited review, including the low burden of proof 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. Former DCS Director Gregory McKay had ‘deleted’ the credibility findings of the independent ALJ, adopting his own agency’s unsupported and unproven version of events instead. NCLA believes these procedural defects deprived Phillip B. of due process of law in violation of the Arizona Constitution and the U.S. Constitution.

However, NCLA also asserted multiple legal errors by the DCS Director in substantiating the allegations against Phillip B. and entering his name on the Central Registry. Writing for the majority, Judge D. Steven Williams avoided the constitutional questions by deciding in Phillip B.’s favor on a central legal argument in the case pertaining to the definition of ‘substantiated finding.’ Specifically, the Arizona Court of Appeals held that DCS’s regulations do not allow the DCS Director to place Phillip B.’s name on the Registry, when, as established here, “an ALJ has not found probable cause at a hearing.” The Court ruled that “when a hearing is held, only if both conditions are met—(1) an ALJ’s finding of probable cause and (2) the Director’s acceptance of the ALJ’s finding of probable cause—is a finding ‘substantiated’ and entered into the Registry.” Neither of the two prerequisites was met here: the ALJ did not find probable cause and the Director did not accept the ALJ decision.

NCLA commends the Arizona Court of Appeals for clearing Phillip B.’s name and ruling that the administrative review system in place at DCS does not allow the agency head to unilaterally reject or modify the decisions of independent ALJs and then place a name on the Central Registry.

NCLA released the following statements:

“NCLA is thrilled that today’s decision from the Arizona Court of Appeals completely vindicates our client, Phillip B. The Department of Child Services should never have entered his name onto Arizona’s Central Registry for substantiated findings of child abuse in the first place.”

— **Mark Chenoweth, President and General Counsel, NCLA**

“The administrative law judge who heard live testimony from the witnesses in this matter deemed Phillip B. and the other adult witnesses credible and did not find probable cause that any abuse had occurred. The Director of DCS then decided to ‘delete’ the ALJ’s credibility finding and placed Phillip B.’s name on the Registry. As the Court of Appeals found today, that decision was unlawful, as DCS’s definition of a ‘substantiated finding’ does not include such unilateral action by the Director.”

— **Harriet Hageman, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) and watch the 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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