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NCLA Questions Constitutionality of Arizona Department of Child Safety's Administrative Proceedings

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

Washington, DC (September 3, 2019) – The New Civil Liberties Alliance is taking a case to right a wrong committed by the Arizona Department of Child Safety (DCS). A core principle of the American justice system holds that defendants are considered innocent until proven guilty. But under the administrative review system in place at DCS, a mere finding of ‘probable cause’ by the agency’s Director will land the accused on the Arizona Central Registry of child abusers for 25 years. NCLA has filed a **motion** with the state Superior Court of Maricopa County to stay enforcement of the DCS Decision and Order, pending a fair trial on the abuse allegations.

For decades NCLA client Phillip B. has worked with youth in many capacities including counselor, football coach, teacher and professional supervisor of foster kids, devoting his career to making a positive difference in their lives. He had an untarnished reputation as a person working with youth. But in 2018, Mr. B. (whose name has been redacted to preserve his anonymity) found himself falsely accused of child abuse by one of the children in his care.

According to the **findings of fact** entered into the record, a 15-year-old resident where he was employed, accused him of using “inappropriate restraint” against a 13-year-old resident. In reality, Mr. B. had “placed his hand on the boy’s shoulder and admonished him to calm down” after the teen became distressed because he did not want to do chores. An administrative law judge (ALJ) from the Office of Administrative Hearings, which is independent of DCS, heard eyewitness testimony and made credibility determinations. She then concluded that probable cause did not exist to support a finding of abuse. In other words, she cleared Phillip B. of the charge.

Remarkably, despite the ALJ’s conclusion, DCS Director Gregory McKay rejected the findings, amended both the ALJ’s findings of fact and conclusions of law, and substituted his own judgment in place of the ALJ’s. Without court intervention, this turn of events would add Mr. B’s name as a child abuser on the Arizona Central Registry, utterly destroying his reputation and career.

The New Civil Liberties Alliance is **challenging** several aspects of the DCS process, including the low standard of proof (“probable cause”), the inability to cross-examine witnesses, and the ability of a bureaucrat at DCS to reverse the ALJ’s findings and act as prosecutor, judge, and jury in determining the fate of the accused.

NCLA released the following statements:

“The arbitrary nature of a system that labels an innocent person as a child abuser based on ‘probable cause’ is unconstitutional. We believe agency action in this case contradicts current law, is not supported by substantial evidence, and is the ultimate abuse of administrative power.”—**Adi Dynar, Litigation Counsel, NCLA**

“The lack of due process inherent in DCS’s administrative review process is shocking. No one should be at risk for a penalty as severe as being placed on the Arizona Central Registry without a full and fair hearing and a verdict from an independent judge.” —**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.

For more information visit us online: NCLAlegal.org.

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