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NCLA Amicus Brief Asks Arizona Supreme Court to Reject Agency Deference in Ratemaking Lawsuit

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

Washington, DC (April 6, 2021) –Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in support of petitioners in *Sun City Home Owners Association v. Arizona Corporation Commission*. The brief asks the Arizona Supreme Court to interpret the statutory or regulatory texts for itself rather than deferring to the interpretation of an administrative agency. NCLA argues that the Arizona Court of Appeals erred in its January 2020 ruling by giving “extreme deference” to the Arizona Corporation Commission (ACC) in violation of both the state and federal constitutions. The ruling led then-Chief Judge Michael J. Brown, to pen a sharp [dissent](#) calling out the [majority’s error](#) in “giving virtually absolute deference” to ACC.

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 by commanding judicial bias toward one litigant. In this case, it compels judges to abandon their independence by giving controlling weight to ACC’s opinion of what a statute means, not because of the persuasiveness of ACC’s argument, but rather based solely on the fact that this administrative entity has addressed the interpretive question before the Court.

ACC provided individual wastewater service rates to five separate wastewater districts within the Phoenix Metropolitan area. ACC later consolidated these districts and applied a flat wastewater rate for all customers in the new district, an action challenged by customers in the rate discrimination lawsuit. The ruling by the Arizona Court of Appeals against the petitioners suggested that because ratemaking is a function entrusted to ACC by the Arizona Constitution, the Court would “generally presume” ACC’s actions are constitutional.

The Arizona Supreme Court should declare agency deference unconstitutional and provide its own interpretation of relevant statutory or regulatory text.

[Oral argument](#) is scheduled before the Arizona Supreme Court for May 18 at 9:30 am MST.

NCLA released the following statement:

“ACC might enjoy a particular psychological hold over Arizonans, but it holds no special status under the Arizona Constitution. It is certainly not above the law. 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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