The Arizona Center for Law in the Public Interest
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THE CENTERLINE

JUDGE SCHEDULES HEARING IN AHCCCS CASE

A Maricopa County Superior Court Judge has scheduled August 3rd as the date that our request for a preliminary injunction to stop AHCCCS from denying health care to adults without dependent children will be heard.

The Center, along with the Morris Institute for Justice and the Arizona Center for Disability Law, filed a lawsuit against AHCCCS and the state of Arizona on June 27 to stop AHCCCS from implementing a freeze on the provision of health care benefits effective July 1. The freeze would not affect adults without dependent children who are currently enrolled in AHCCCS but would deny benefits to any such individuals who apply after July 1.

We've alleged that the freeze on benefits would violate Proposition 204 which was approved by Arizona voters in 2000 and provides that all individuals with incomes at or below 100% of the federal poverty level are eligible for AHCCCS. Proposition 204 further provided that neither the legislature nor the executive branch of state government could impose any caps on eligibility. As a voter-approved initiative, Proposition 204 is protected from amendment or repeal by the Voter Protection Act which was approved by voters in 1998 to prevent the legislature from frustrating the intent of voters by repealing or amending voter-initiated laws.

Judge Mark Brain denied our motion for a temporary restraining order on the grounds that none of the plaintiffs in the case were facing any irreparable harm from the freeze because they were already enrolled in AHCCCS. Because of delayed federal approval for the freeze, it did not go into effect until July 8. Between then and August 3rd, when the preliminary injunction hearing is scheduled, we plan to add additional plaintiffs to the lawsuit who will have been denied eligibility for AHCCCS because of the freeze even though they qualify under Proposition 204.

As its defense to the plaintiffs' suit, the state claims that it had no other choice but to impose a freeze on eligibility because of the state's budget deficit. However, it's clear that the budget deficit is simply an excuse for some legislators to cut a program they don't like. As a result of the freeze, it's expected that the number of individuals enrolled in the AHCCCS program will decline by at least 150,000 people over the next year. The impact on these individuals and the state will be devastating. Individuals without health care will either go untreated or go to emergency rooms. Meanwhile, the state will lose hundreds of millions of dollars in federal matching funds. What's crazy is that the move to exclude adults without dependent children from AHCCCS will only save the state $190 million this fiscal year. Projected revenues for Arizona are already running $275 million higher than previously forecast. Therefore, the state actually has enough money to comply with Proposition 204 and provide health care to everybody at or below the federal poverty level. The legislature just doesn't want to. That's why it's important that we pursue this lawsuit and force the state to abide by the obligation that Arizona voters established when they overwhelmingly approved Proposition 204. Unlike their legislators, voters understand that short term savings at the expense of necessary medical care is penny wise and pound foolish.

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COURT STOPS UNLAWFUL FUNDING OF STATE LAND DEPARTMENT

On June 30, the Arizona Court of Appeals refused the Arizona State Land Department's request to allow for the continued funding of the Department with state trust land proceeds.

The legislature has been funding the Land Department with money from the sale of state trust lands since 2009. The Center sued the Land Department and last November, Maricopa County Superior Court Judge Gary Donahoe ruled that the funding scheme was unconstitutional. Maria Baier, Arizona State Land Commissioner, appealed that ruling to the Arizona Court of Appeals and secured a stay of the judgment through June 30. Prior to that date, she filed a motion with the court to extend the stay for the duration of the appeal and it was that motion that the court denied on June 30.

The effect of the court's ruling is that the state will no longer be able to intercept proceeds from the sales of state trust lands and use those funds to support the Land Department while the Land Department's appeal is pending. Under the Arizona Constitution, those funds are supposed to be deposited into accounts for the benefit of the beneficiaries of state trust lands, principally Arizona's public schools. The legislature enacted legislation in 2009 that allowed the Arizona State Land Commissioner to divert up to 10% of state trust land proceeds each year to fund the Department. Approximately $10 million has been diverted in each of the last two fiscal years from the funds that should have gone to benefit Arizona's public schools.

The Court of Appeals could change its mind when it hears oral argument on the issues sometime in September. But at least for now, proceeds from the sale of Arizona state trust lands are going to benefit Arizona's public schools just as the Arizona Constitution requires.

THANK YOU

The Center would like to thank **LEXIS-NEXIS** for its continuing grant of computerized legal research services.

RENEWABLE ENERGY RULES UNDERMINED BY CORPORATION COMMISSION

On July 14, the Arizona Corporation Commission approved calling a waste incinerator project proposed for the West Valley "renewable energy" under Arizona's renewable energy standard. The vote was 3-2, with Commissioners Sandra Kennedy and Paul Newman voting "no." Under the recently adopted standard, Arizona utilities are required to obtain a certain percentage of their retail sales with renewable energy like solar or wind power so that by 2025, at least 15% of their sales are from renewable energy resources. Renewable energy resources qualify for credits that make their acquisition by utility companies financially viable.

Last November, Mohave Electric Cooperative, an electric utility serving northwestern Arizona, filed an application with the ACC seeking approval of a waste-to-energy project as renewable energy under the Commission's rules so that it would qualify for the available credits. The plant, which would burn approximately 500 tons of trash each day, was proposed to be located in Maricopa County and the energy transmitted to northwestern Arizona for consumption by Mohave's customers. The waste incinerator was to be constructed and operated by a company called Reclamation Power Group which has never built or operated such a facility.

The Center intervened in this case on behalf of the Sierra Club-Grand Canyon Chapter and opposed the project. Calling a waste incinerator renewable energy is absurd to begin with but allowing a waste incinerator to be located in Maricopa County which violates Clean Air Act requirements for particulate matter and ozone made no sense whatsoever.

The ACC considered Mohave's application at its Open Meeting on July 12. At that time, we asked that the Commission schedule an evidentiary hearing to consider all factual material that had been recently submitted by Mohave and Reclamation Power Group. The Commission decided to hold an evidentiary hearing but insisted that it be conducted the next day, providing less than 24 hours notice. On July 13 the ACC convened the evidentiary hearing but quickly decided that it didn't want to hear too much evidence so it limited the direct and cross examination of any witnesses to 10 minutes. Of course, given the short notice, the Sierra Club-Grand Canyon Chapter was unable to arrange for the appearance of witnesses that it would have otherwise had testify.

On July 14, immediately upon the conclusion of the "evidentiary hearing," the Commission voted 3 – 2 to approve Mohave's application over our strong objections. The next step is to consider an appeal to superior court based on the fact that waste-to-energy facilities do not qualify as renewable energy resources under the Commission's rules and that the hearing, conducted by the Commission on such short notice and with virtually no right of cross examination, was unfair and deprived the parties of their due process rights.

U.S. Supreme Court Rejects SRP's Petition re ANSAC

In late April 2010, the Arizona Court of Appeals reversed and remanded the finding by the Arizona Navigable Stream Adjudication Commission ("ANSAC") that the lower Salt River was nonnavigable at the time of statehood. This was a big victory for the Center and other proponents of navigability, and the decision impacts the navigability determinations of several other rivers including the Upper Salt, Gila, Verde, Santa Cruz and San Pedro.

After the Arizona Supreme Court declined petitions for review, Salt River Project filed a Petition with the United States Supreme Court asking that Court to reverse the Arizona Court of Appeals. The Supreme Court rejected SRP's petition, however, because it was filed a day late. That means the Court of Appeals decision stands and, in all likelihood, the parties are now headed back to ANSAC for another round of hearings.

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