

CENTER TO SUE STATE OF ARIZONA OVER HEALTH CARE CUTS

The Center plans to file a lawsuit challenging cuts that the legislature and Governor make to the AHCCCS program that provides health care coverage to low income individuals. The proposed cuts violate Proposition 204 enacted by Arizona voters in 2000 which provides that health care benefits will be provided to any individual whose income is at or below 100% of the federal poverty level. Most of the cuts proposed by the Governor and the legislature are to adults without dependent children currently served by AHCCCS.

In January, the Governor submitted a budget that proposed to reduce the number of individuals receiving health care benefits by 280,000 as of October 1, 2011. The vast majority are poor adults. More recently, the Governor has modified that proposal to reduce the childless adult population by roughly 100,000 over the 12 months beginning July 1. According to the Governor's most recent plan, that reduction coupled with a number of other measures would save the state approximately \$500 million in fiscal year 2012 that begins on July 1.

Regardless of which plan is adopted by the legislature, it will

violate the clear terms of Proposition 204 that was enacted by voters over ten years ago. Proposition 204 provided that any person with an income between zero and 100% of the federal poverty level was eligible for health care benefits under the AHCCCS program. The Proposition directed that Arizona Tobacco Litigation Settlement Funds be used to support the expanded AHCCCS population but if that wasn't enough that the legislature should supplement the funding with "any other available sources including legislative appropriations..." The legislature and Governor claim that the state is broke and that there are no other funds to support the expanded population required by Proposition 204.

Of course, there's a difference between being broke and misunderstanding your legal obligations. The state's budget for fiscal year 2012 will be somewhere between \$8 billion and \$9 billion. The amount needed to support the expanded adult population under Proposition 204 is less than 7% of that amount. There aren't many things that the legislature is required to fund under the Arizona Constitution. In fact, health care and education are about it. Everything else constitutes discretionary funding. The

legislature and Governor need to understand that their obligation is to first follow the law and spend available funds on required health care and education programs. If that means they can't spend money on their pet projects, that's the way it goes.

Nobody has ever accused our legislature of being farsighted but in the case of cutting AHCCCS it is being particularly myopic. Denying health care coverage to needy individuals doesn't help anybody. Increasing the number of sick people without health care seems like a bad idea on its face. In the end, it also becomes more expensive when untreated illnesses develop into more serious conditions that require more expensive care in emergency clinics and hospitals.

The legislature cannot change Proposition 204 without violating the Voter Protection Act in the Arizona Constitution. More than a dozen years ago, Arizona voters got tired of the legislature disregarding laws that voters themselves passed so they amended the Arizona Constitution to prohibit the legislature from ignoring initiative measures proposed and passed by Arizona citizens. If the legislature and Governor ignore Proposition 204 they will be violating the Arizona Constitution and

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The Centerline is a quarterly newsletter published by the Arizona Center for Law in the Public Interest.

Check Out Our New Website!

If you haven't surfed over to www.aclpi.org recently, take a few minutes to check it out. Over the past several months, we have completely revamped our website. With the help of Ariel Gold, and the tireless commitment of Board Member and webmaster Shefali Milczarek-Desai, we now have a website that is not only eye catching but informative and up to date.

As you can see from the screen shot printed below, the home page gives you a snapshot of the latest news, but there are pull down menus that will let you get all of the details you need, including copies of pleadings and court decisions. Center supporters can follow the progress of all of our cases, and even make donations online to support our work. The website also includes links to press coverage about Center litigation, or issues that Center staff are working on.

Over the next month, we'll even be posting information about some of the more exciting auction items that have been donated for the annual event.

So please, the next time you're on the internet, come on by for a "cyber-visit"!

Healthcare cuts continued

(Continued from page 1)

we'll file an action in the Arizona Supreme Court asking that the Court prohibit the fiscal year 2012 budget from going into effect until a constitutional budget is enacted that complies with Proposition 204.

The Center is co-counseling this case with lawyers from the Morris Institute for Justice and the Arizona Center for Disability Law.



Appeal Filed in Education Funding Case

On March 8, 2011, the Plaintiffs filed an appeal of Judge Kenneth Mangum's decision that Proposition 301 does not require the legislature to annually adjust education funding for inflation. The Plaintiffs include six school districts, the Arizona Education Association, Arizona School Boards Association and individual taxpayers.

On February 9, 2011, Maricopa County Superior Court Judge Kenneth Mangum ruled that Proposition 301 enacted by Arizona voters in 2000 did not require the Arizona legislature to annually inflate education funding for Arizona's public schools. The language of the initiative provided that "the legislature shall increase the base level or other components of the revenue control in it" by either 2% or the amount of inflation whichever is less. Last year's budget provided an inflationary adjustment to only one extremely small compo-

nent of the school funding formula instead of increasing base level funding.

The legislature's narrow interpretation of Proposition 301 meant that school districts received \$50 million less than they should have. The legislature justified its refusal to increase base level funding by claiming that the literal language of the Proposition gave it the option of which education funding component to inflate. That interpretation is blatantly inconsistent with the voters' intentions when they approved Proposition 301 which was clearly to insure that education funding kept pace with inflation.

Judge Mangum did not reach that issue. Instead, he held that Proposition 301 merely states the intention of the voters that an appropriation be made to protect schools from the effects of inflation but the Proposition by itself is not self executing. He stated that, "the voters

cannot require the legislature to enact a law that provides for that appropriation." Judge Mangum then held that the Proposition itself did not constitute an appropriation and that therefore Proposition 301 amounted to nothing more than a request by the people of Arizona that the legislature increase education funding.

Not only does Judge Mangum's decision deny required funding to public schools in this particular case, it has the potential for undermining voter approved ballot measures. On appeal, we'll argue that the requirements of Proposition 301 constituted a direct appropriation of funds or, at a minimum, a mandatory directive to the legislature to appropriate the necessary funds.

The Center is co-counseling this case with Don Peters at LaSota & Peters, P.L.C. who is lead counsel.

Save the Date!

**The Annual Event to Benefit
the Arizona Center for Law
In the Public Interest**

Saturday, May 14, 2011

**Food, Drinks, and Live Music
at Bentley Projects
6:00 to 10:00 p.m.**

**ACLPJ Award Recipient
Kris Mayes**

The State Continues to Avoid Its Responsibilities to Provide Mental Health Services to Children

Ten years ago, Judge John Roll approved a Settlement Agreement in *J.K. v. Humble* to protect the right of Arizona's Medicaid-eligible children to receive necessary mental health and substance abuse services. Federal law requires States to provide Medicaid-eligible children "necessary ... services, treatment and other measures ... to correct or ameliorate ... physical and mental illnesses and conditions." In the Agreement, Defendants – the directors of the Arizona Department of Health Services, the Department's Division of Behavioral Health Services, and the Arizona Health Care Cost Containment System – agreed to meet this obligation by developing and maintaining a service system that meets the nationally accepted standards spelled out in the "J.K. Principles." Unfortunately, the state has failed to hold up its end of this Agreement and in recent months has engaged in a variety of stall tactics in an effort to avoid its responsibilities.

The Agreement includes specific actions Defendants must take to develop and maintain this system, including: developing an array of intensive community-based services for children with serious conditions; expanding substance abuse services; developing a training program that ensures staff have necessary knowledge and skills, and changing the

state's quality management system so that it measures whether class members are receiving the services required by the Agreement.

The Agreement contemplated compliance by July 1, 2007, on which date it would terminate. The Agreement also provided an additional six months beyond the July 1, 2007 termination date to resolve pending disputes.

In January 2006, however, Plaintiffs invoked the dispute resolution procedures in the Agreement, which provides a three-step process: negotiation, mediation, and then resolution by the Court. Following a lengthy mediation process, the parties stipulated to a three-year extension of the Agreement and the Court issued an Order extending the term of the Agreement to July 1, 2010, and the period for resolving compliance disputes to February 1, 2011.

On March 6, 2009, Plaintiffs again invoked the Agreement's dispute resolution process, alleging non-compliance by the Defendants in six specific areas. The parties returned to mediation, but the mediator concluded that the parties were "too far apart in their positions" for continued efforts to be productive. As a result, the Plaintiffs sought judicial relief, including a second extension of the term of the Settle-

ment Agreement.

Defendants responded with a motion to dismiss, and both motions were fully briefed by the parties. In June 2010, Plaintiffs sought a status conference, which Defendants opposed. In their Opposition, the Defendants claimed that they now wanted to raise issues not addressed in the parties' prior briefing on the Motion to Dismiss. Based on Defendants' representations, Judge Roll asked the Plaintiffs to re-file their motion to enforce the Agreement so that the Defendants could re-file their opposition, raising all pertinent issues. Plaintiffs re-filed their motion as the judge requested. However, when Defendants re-filed their motion to dismiss, inexplicably they raised no new issues. Instead, they filed the exact same thing as before.

Judge Roll heard oral argument on November 22, 2010. At oral argument, Judge Roll explained that due to the judicial emergency in Arizona, he did not have sufficient time to dedicate to a trial on issues in the case, despite the fact that he considered the issues raised by the case as very important and deserving attention. On November 29, 2010, Judge Roll issued an Order denying the parties' pending motions and directing the parties to again try mediation, identifying six areas of alleged non-compliance that the parties were to discuss.

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Center's Annual Event Moving Back to Bentley Projects

Although last year's event at the Phoenix Art Museum was a great success, this year the Center's Board of Directors decided to move the event back to Bentley Projects, which has been home to the event for the past several years. Although the museum was lovely, Bentley Projects has been a great fit for our unconventional "dinner." And based on the feedback from attendees, the venue really contributes to the event's out-of-the-ordinary character.

Once again we will have a hosted bar and food from Arizona Taste. Instead of a sit down dinner, we will have passed hors d'oeuvres and elegant food stations set up throughout the gallery. Because our theme this year is "Go Green," the menu will feature fresh foods from local farms and markets.

There will be live music and entertainment by Epik Dance Company. And of course, we will once again have our auctions. Last year's silent auction featured over 100 items, ranging from original artwork and one-of-a-kind jewelry pieces. Guests also bid on wines from all over the world, musical instruments, and golf outings. This year's live auction will once again feature a fabulous one week vacation in Puerto Vallarta, Mexico (thanks to Jose de Jesus Rivera who has once again donated a week at his beautiful beach house). For pictures of the house and other enticing auction items, see www.aclpi.org.

We will also be presenting our Public Interest Award to Kris Mayes in recognition of her important work on renewable energy and energy efficiency

issues while she served on the Arizona Corporation Commission.

This is the Center's only fundraising event of the year in the Phoenix area, so please make every effort to attend and join the fun. Tickets are \$150 each and are available by contacting the Center at (602) 258-8850. If you'd like to attend but the ticket price is too steep, please let us know. We have a limited number of tickets available at no cost.

Also, let us know if you have something that you can donate for the silent and/or live auction. Popular items include frequent flier miles, vacation timeshares, sporting event tickets, sports memorabilia, wine, jewelry, or gift certificates. We hope to see you there!

J.K.V. HUMBLE CONTINUED....

(Continued from page 4)

On January 8, 2011, Judge Roll was tragically killed in the Tucson shootings. Because they had already scheduled the mediation ordered by Judge Roll for February, 2011, the parties proceeded to meet with the mediator, former Superior Court Judge Rebecca Albrecht. At the end of the first day of mediation, however, the Defendants stated they did not wish to engage in mediation without first obtaining a ruling from the Court on the scope of their obligations under the Settlement Agree-

ment. Accordingly, the parties agreed "to suspend the mediation in order for the defendants to bring (a) motion(s) before the court to resolve certain legal issues."

On March 4, 2011, Defendants filed Motion to Terminate the Court's Jurisdiction, which the Plaintiffs have opposed. The case has been reassigned to Judge A. Wallace Tashima, Senior Judge Ninth Circuit Court of Appeals but no hearing has been set.

THANK YOU

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