

MESSAGE FROM THE PRESIDENT

During these turbulent and unsettling political times, it is comforting to know that, at least in Arizona, one thing remains constant - the Arizona Center for Law in the Public Interest. For over 40 years, the Center has stood as a bulwark against government action or inaction that has had the effect of violating the legal rights of Arizona citizens or irreparably damaging our environment.

The Center's legal achievements over the years, including those described in this newsletter, are breathtaking in their scope. Through the Center's effective pro bono legal advocacy, countless Arizona citizens - particularly those who are the most vulnerable - are enjoying better lives. Indeed, as I write this article, I'm celebrating the Center's stunning victory defeating the legislators' attempt to overturn the state's expansion of Medicaid coverage for hundreds of thousands indigent Arizona citizens who would otherwise have no access to healthcare.

I am also closely following the Center's class action lawsuit brought on behalf of thousands of children trapped in our state's foster-care system who are not receiving adequate physical, mental and behavioral health services. As a believer that a strong public school-system is the foundation for a vibrant democracy, I applaud the Center's successful record of representing the interests of public schools against our state's shameful failure to properly fund and provide services to our public school-system. It is comforting to know that when such injustices occur, the Center stands ready to fight the fight.



Danny Adelman, the new Executive Director

For 26 of the last 30 years, Tim Hogan has tirelessly and courageously led the Center through these protracted and politically thorny legal battles. For that reason, his announcement earlier this year that he was stepping down as the Center's Executive Director was probably unsettling to some. While Tim will certainly be missed, the Center is bigger than one person, one case, or one cause. The Center embodies the values and aspirations of the clients it represents and those who share these values and aspirations. Center supporters recognize the vital role it plays in our state and cannot imagine Arizona without its presence. Because of your support, the Center will not only survive, but thrive, under new leadership.

With that said, it is with great pleasure that I announce the selection of Danny Adelman as the Center's new Executive Director. Danny will assume leadership of ACLPI in early 2018. Danny is a former long-

time Center board member and respected Arizona attorney. He possesses the rare combination of exceptional legal skills, tenacity, strategic vision and compassion to be able to continue and build on Tim's and the Center's legacy of fighting for social justice through effective legal advocacy.

Please join me in collectively supporting the Center, under Danny's leadership, as it continues its unique role in Arizona of representing the interests of vulnerable populations and causes that would not otherwise have a voice in our legal system.

Stacy Gabriel
President
Board of Directors of
the Arizona Center for Law
in the Public Interest

COURT GRANTS CERTIFICATION IN FOSTER CARE CASE

On October 2, U.S. District Court Judge Roslyn Silver granted the plaintiffs' motion to certify the foster care case as a class action. That means that the case will not be limited to simply the named plaintiffs but extends to all 17,000 foster children in the state's custody. It allows us to pursue system wide relief against the Department of Child Safety and the Arizona Health Care Cost Containment System for policies and practices that

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Arizona Center for Law
in the Public Interest
514 W. Roosevelt St.
Phoenix, Arizona 85003
(602) 258-8850

P.O. Box 41835.
Tucson, Arizona 85719
(520) 529-1798

www.aclpi.org

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SUPREME COURT UPHOLDS MEDICAID EXPANSION

On November 17, the Arizona Supreme Court unanimously ruled that the expansion of Arizona's Medicaid program was constitutional in *Biggs v. Betlach*. On October 26, the Arizona Supreme Court heard argument in the Medicaid expansion case, *Biggs v. Betlach*. At issue in the case was whether Arizona's decision to extend health care benefits to over 400,000 Arizonans under the Affordable Care Act was unconstitutional because it was not approved by the two-thirds majority of legislators that is required for a tax increase. The Center intervened in the case on behalf of low income individuals who became eligible for health care benefits as a result of the expansion.

In 2013, then Governor Brewer supported legislation to take advantage of the opportunity under the Affordable Care Act to expand health care coverage to low income individuals in Arizona. For states that chose to expand their coverage, the federal government would pick up almost all of the costs. In a hard fought battle at the legislature, Governor Brewer prevailed when a majority of legislators voted to approve the expansion.

The legislators who opposed the Affordable Care Act and the Medicaid expansion filed a lawsuit claiming that the assessment imposed on hospitals to pay the state's share of the expansion constituted attacks that required a two-thirds majority vote to approve in each house of the legislature. The director of AHCCCS was named as a defendant and

we intervened to insure that the legislation was vigorously defended. We argued that the hospital assessment was not a tax and that it was exempt from the two-thirds requirement by virtue of an explicit exception in the Constitution for assessments that are authorized by statute but that are not prescribed by a formula, amount or limit and which are set by a state officer. Both the trial court and the Court of Appeals agreed in decisions holding that the assessment was not a tax and that it was exempt from the two-thirds vote requirement.

The Supreme Court agreed with the decisions and held that the hospital assessment was not a tax and that it was exempt from the two-thirds vote required for tax increases. The Court's decision means that over 400,000 Arizonans who became eligible after the extension will continue to receive healthcare benefits. We're hopeful that the Supreme Court will agree with the lower courts and affirm the extension of health care benefits to over 400,000 low income Arizonans.

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TRIAL COURT DECISION ON CITIZEN INITIATIVES IS APPEALED

Earlier this year, the legislature enacted yet another law making it more difficult for citizens to enact new laws through the petition and ballot process. The new law enacted by the legislature, House Bill 2244, would subject initiative petitions to strict compliance with all petition and circulation requirements in order to qualify for the ballot. Up until now, the Supreme Court has held that initiative petitions were only subject to substantial compliance with those requirements.

The Center joined with the law firm Coppersmith Brockleman in June to file a lawsuit challenging HB 2244 as an unconstitutional violation of the separation of powers doctrine in the Arizona Constitution. We argued that the legislature was unlawfully exercising power reserved to the Supreme Court under the Arizona Constitution.

The trial court conducted a two day trial in July during which we offered testimony from a number of organizations and individuals about the impact the HB 2244 would have on the initiative process. All of the witnesses testified that a strict compliance standard would make the initiative process much more expensive and lead to many more lawsuits challenging the validity of signatures on initiative petitions. Nevertheless, Maricopa County Superior Court Judge Sherry Stevens ruled that the lawsuit was premature and not yet ripe because none of these organizations or individuals has actually taken out an initiative petition, circulated it and submitted signatures to the Secretary of State for validation. We argued that citizens tak-

ing out an initiative should not have to go to the additional expense of meeting a strict compliance standard before the Court is able to rule on the purely legal question on whether the legislature could impose a requirement at odds with previous Supreme Court decisions.

In October, we appealed the trial court's decision to the Arizona Court of Appeals and moved to expedite its consideration because of the importance of the issue for next year's election. At the same time, we petitioned the Arizona Supreme Court to transfer the case from the Court of Appeals because the Supreme Court will inevitably be asked to rule on this issue.

This is an important case because the legislature explicitly acknowledged when it passed HB 2244 that it was doing so in order to make citizen initiatives more difficult. The legislature cited the Voter Protection Act as the problem because it prevents the legislature from amending any voter approved initiative without a three-fourths vote in each house of the legislature. The legislature claims it needs the ability to amend initiatives in a way "that may well represent the wishes of the current majority of the people." This, of course, is code for the legislature wanting to be able to amend initiatives when it doesn't agree with them. That's what led voters in 1998 to approve the Voter Protection Act in the first place because the legislature was basically repealing initiatives that voters had approved.

We hope the courts will see through this transparent effort and fully protect the right of Arizona citizens to initiate laws without interference from the legislature.

FOSTER CARE CASE

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affect all foster care children and result in the failure to provide them with physical and behavioral health needs.

DCS and AHCCCS opposed class certification on numerous grounds. They cited their plans to improve the system so that foster care children would no longer face serious harm and that therefore the lawsuit was unnecessary. They additionally claimed that four of the named children in the original complaint filed in 2015 have been adopted but Judge Silver noted that two had not and that children in the foster care system are inherently transitory, moving in and out of state care.

The Judge also rejected DCS' argument that the two individually named children remaining in the complaint had not shown any personal harm from the state's care. The Judge cited examples from the complaint undermining DCS' claim that the children had not been harmed including the case of a girl that was separated from her siblings and placed in a group home on what was supposed to be a short term stay. Instead, she remained in the home for more than two years. In another case, a 16 year old boy had been shuffled among various group homes and other placements during his eight years in state care. When his aunt told AHCCCS the child was not getting the mental health services he needed, the state moved him to an emergency foster home rather than providing the necessary services.

Following Judge Silver's ruling, both DCS and AHCCCS have asked the Ninth Circuit Court of Appeals for permission to appeal the order. That request is pending. Meanwhile, the case is expected to go to trial in Spring 2018. The Center is co-counsel in this case with Children's Rights and Perkins Coie.

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	514 W. ROOSEVELT ST. PHOENIX, ARIZONA 85003
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