

## Center Fights for Democracy and Education Funding By Defending Proposition 208

Proposition 208 qualified for the 2020 ballot despite a pandemic that threatened signature-gathering efforts and an unsuccessful pre-election challenge brought by powerful individuals and special interests. In November of 2020, more than 1.6 million Arizonans voted in favor of Prop 208, which imposes a 3.5% tax on earnings over \$500,000 for couples filing jointly or \$250,000 for single filers. The money raised through this tax will provide targeted grants to Arizona's public schools, which are among the least well-funded in the entire country. The grants support our teachers, our counselors, and most importantly, our students.

No sooner than the law went into effect, two different lawsuits were filed seeking to have the law struck down. The Center has joined forces with the team led by Roopali Desai and Andy Gaona to defend Prop 208. By doing so, the Center is furthering its core missions of defending our democracy and increasing funding for education.

The right of the people to legislate through initiative is one of the most important rights secured by the Arizona Constitution. When our legislature fails to address important issues, the Arizona Constitution says that *the people* can make laws. This is the ultimate expression of direct democracy. But to certain powerful interests, the idea that the people can legislate is abhorrent, because it takes away their power to control our State. The Center has always defended the people's power of direct democracy, and we are doing so once again by defending Prop 208, which the majority of Arizona voters approved just a few months ago.

Arizona's school funding is among the very worst in the country. Arizona devotes a lower percentage of our income to K-12 education than any other state. We devote *thousands* of dollars less per pupil than the national average. And our heavy reliance on the property wealth in each individual district to raise money for schools causes vast inequity. Finally – after years of inaction by the legislature and the governor – a majority of Arizona voters said “enough.”

The individuals and groups who sued to overcome the will of the majority asked the court to issue emergency relief to prevent Prop 208 from ever going into effect. They made a series of claims that Prop 208 violates various provisions in the Arizona Constitution. After extensive briefing, the court denied the requests for emergency relief. The court rejected some of the claims as being especially weak and unfounded. The court also stated that it required more evidence to consider some of the claims.

The plaintiffs appealed the judge's decision to the Arizona Supreme Court. The parties are presenting their legal arguments in briefs to the court. The Arizona Supreme Court will hold a hearing on the case in April.

We are grateful for your support, which enables the Center to take on important cases like this. It is thanks to you that we are able to fight for our democracy and the right of every child to receive a quality education.

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## Ensuring Equity in Crisis Healthcare Availability

### **New Standards will not Prejudice the Elderly, Those with Disabilities, or People of Color**

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The Center, together with a coalition of local and national advocacy groups, was successful in securing changes to the Arizona Crisis Standards of Care, which ensured that the allocation of limited health resources during a pandemic no longer discriminates against people with disabilities, older Arizonans, and communities of color.

In June 2020, during the first surge of COVID cases, the coalition filed a complaint with Governor Ducey, Dr. Christ (Arizona Department of Health Services), Director Snyder (Arizona Health Care Cost Containment System), and Assistant Director Zane Ramadan (Division of Developmental Disabilities) demanding a change to the current Crisis Standards of Care to ensure that all Arizonans have equal access to life-saving treatment and that any rationing not be based on disability, age, race, or ethnicity.

In July, 2020, when there was no response from the State, the coalition filed a Complaint with the Office of Civil Rights of the U.S. Department of Health & Human Services. The Complaint alleged that the following criteria discriminated against people with disabilities, older Arizonans, and communities of color: consideration of long term (1 to 5 years) life expectancy; consideration of whether the person had already experienced multiple “life stages”; consideration of past or future intensity of service needs and the existence of pre-existing illness; use of flawed scoring mechanisms that did not accommodate for disabilities; and the failure to provide for short-term survivability as the relevant standard. In addition, the Complaint challenged the lack of due process in appealing resource allocation decisions.

When COVID cases began to surge again in December 2020 the Office of Civil Rights responded to the Complaint and engaged the State in negotiations aimed at making the changes recommended by the coalition. When the State took no action in response to the OCR initiative the coalition joined a legislative effort to incorporate the necessary protections in statute. With the threat of legislation the State finally changed the Crisis Standards of Care to meet the coalition’s demands.

## Center Fights to Secure Emergency Funding for At-Risk Communities

### Court Declares City of Phoenix's Restriction Preventing Immigrants from Receiving CARES Act Assistance Unconstitutional

In March of last year, in response to the COVID-19 pandemic, Congress established the Coronavirus Relief Fund (Fund) as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Fund was allocated \$150 billion which was then distributed to state and municipal governments to cover public health expenses related to COVID-19. Congress did not place any immigration restrictions on the use of these funds. The City of Phoenix was allotted \$293 million from the Fund, and last May decided to use \$25.7 million of that money to help renters and homeowners afford rent, mortgage, and utility payments during the pandemic.

However, despite there being no explicit immigration or nationality restrictions on the use of the Fund, the City conditioned eligibility for its housing assistance program upon immigration status, barring unqualified immigrants from applying for and receiving aid. The City's restrictions not only barred undocumented immigrants but also extended to Deferred Action for Child Arrivals (DACA) recipients, those with Temporary Protected Status, those seeking asylum, and U-Visa holders, who are the victims of serious crimes, among others.

The US Census shows that the Latinx community, which is often amongst the most harmed by immigration-based restrictions makes up 42.6% of Phoenix residents; roughly 24,000 people in the City of Phoenix are DACA recipients, and 19.5% of residents are foreign born. A 2016 Pew Research study found that roughly 210,000 people living in the Phoenix-Mesa area were undocumented immigrants. Immigrant and mixed-household communities like those above are among the

most heavily impacted by the COVID-19 pandemic. Many immigrants work front-line "essential" positions and were either laid-off as businesses locked down or have been placed at the greatest risk of contracting the virus. By implementing this restriction, the City of Phoenix prevented many of the most heavily-impacted individuals and communities from receiving much-needed aid, exacerbating the impacts of an already unprecedented pandemic.

The City justified this restriction based on the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which restricts "unqualified immigrants" from receiving "federal public benefits." The Center, along with the William E. Morris Institute for Justice and plaintiff organizations Poder in Action and the Arizona Dream Act Coalition, challenged the City's restrictions.

Depositions of leaders from both organizations described numerous instances of families who were unable to afford rent, mortgages, and utilities and of individuals being threatened with evictions despite the moratorium put in place by Governor Ducey and the CDC.

The Center and the Institute argued that, not only did PWRORA not require the City to condition eligibility for CARES Act housing assistance funds on immigration status, but that federal preemption prevented the City from maintaining such a condition. After extensive briefing, the federal District Court for the District of Arizona on December 9 ultimately ruled in favor of the Center and the organizational plaintiffs. Specifically, the court held that PWRORA includes a

*(Continued on page 5)*

# Center and Sierra Club Clean Up Polluted Air

## Court Approves Settlement of Center's Lawsuit Against EPA to Address Particulate Air Pollution

In early March, the U.S. District Court for the District of Arizona approved a settlement and consent decree in the Center's lawsuit against the U.S. Environmental Protection Agency (EPA) over its failure to act on harmful particulate air pollution in West Pinal County. As a result, the State must now submit a plan that contains the "best available control measures" to bring the County into compliance.

The settlement and consent decree fully resolved the lawsuit in favor of the Center's client, Sierra Club. The Center filed suit in April 2020 because the EPA had violated the Clean Air Act for years by failing to approve or disapprove Arizona's plan to address a dangerous type of particulate air pollution known as "PM<sub>10</sub>" in West Pinal County and by failing to determine that the area exceeds national air quality standards for PM<sub>10</sub>.

Particulate air pollution refers to a mix of tiny airborne particles that are often too small to see with the naked eye. The EPA has concluded that particles smaller than or equal to 10 micrometers in diameter, about one-seventh the width of a human hair, present the greatest threat to health. When inhaled, PM<sub>10</sub> pollution passes through the natural filters in the nose and mouth and penetrates deep into the lungs. This can cause breathing difficulties, lung tissue damage, cancer, and even premature death. Children, the elderly, and people with respiratory diseases are particularly vulnerable to the effects of PM<sub>10</sub> pollution.

The EPA designated West Pinal County as "nonattainment" for PM<sub>10</sub> in 2012, and PM<sub>10</sub> levels in the area are among the worst in the

nation. The health-based standard for PM<sub>10</sub> is 150 micrograms per cubic meter. However, multiple air quality monitors in West Pinal County violated the PM<sub>10</sub> standard numerous times from 2016 through 2020. During that time, a monitor near the City of Maricopa recorded PM<sub>10</sub> levels of 1,367 micrograms per cubic meter — nearly 10 times the federal standard. Another monitor in Stanfield, near Casa Grande, recorded PM<sub>10</sub> levels of 1,100 micrograms per cubic meter, or seven times the federal standard. Other monitors also regularly record high levels of PM<sub>10</sub>. Most of the exceeding monitors are located in neighborhoods.

In response to a pre-lawsuit letter from the Center, the EPA determined that West Pinal County failed to attain the PM<sub>10</sub> standard by the relevant deadline of December 31, 2018. This means West Pinal County has been reclassified from a "moderate" to a "serious" nonattainment area for PM<sub>10</sub>. Pursuant to the consent decree requirements, the EPA has also proposed to disapprove most portions of an earlier air quality plan submitted by the State of Arizona that purported to address West Pinal County's PM<sub>10</sub> pollution but failed to adequately do so.


## CARES Act Immigrant Housing Assistance (cont.)

*(Continued from page 3)*

mandatory exception to its immigration qualification requirements in the case of emergency, noncash in-kind payments. The City's program fit within that definition, and therefore federal law preempted the City's decision to condition participation in the

program based on immigration status.

Because of this victory, hundreds or even thousands of immigrant families will be able to benefit from this emergency housing and utility assistance program.



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