

## Victory! - Arizona Supreme Court Rules That Even the Legislature Must Obey Our Constitution

On November 2, 2021, we won a historic victory when the Arizona Supreme Court affirmed a trial court order striking down a whole series of laws that the Legislature improperly stuffed into various budget bills. The Supreme Court rejected the State's argument that the Legislature can ignore the Constitution's requirements that "every act" of the Legislature must deal with a single subject and must have a title that provides notice as to what is contained in the bill.

The title requirement ensures that the public and legislators have fair notice as to a bill's contents. Among other things, this allows an opportunity for the public to know what is being considered and to make their voices heard. The Single Subject Rule prevents "logrolling," where a number of unrelated measures are cobbled into one act, which forces individual legislators to vote for something they oppose in order to win passage of something they support.

*(Continued on page 4)*

## A Message From Bryn DeFusco, the Center's New Board President



I am honored to be the new board president but disappointed that due to COVID, we were not able to host my "coronation ceremony." While my "ascension to the throne" may not involve the celebration I'd anticipated, I am hopeful that we can host an in-person event before 2023 (stay tuned!)

Unbeknownst to me at the time, my initial exposure to the Center began when I moved to Arizona and enrolled at Creighton Middle School and then North High School and benefitted from properly funded schools. Fast forward to parenthood and I am now sending my children to schools in a district that passes overrides/bonds and enjoys well-funded parent-teacher organizations that bridge the funding gaps due to our legislature's failure to fund public schools. Unfortunately, that's not the case for most families in our state. It is this disparity that motivates my dedication to the Center.

The Center plays a vital role in making sure ALL of Arizona's children attend fully funded schools. But for the Center, the State would continue to defund and ignore public schools. Zip codes should *not* determine what type of education our children receive. *It's simply unfair.*

Thank you for your support of the Center. I look forward to doing all I can during my presidency to support the Center's mission.

**Arizona Center for Law  
in the Public Interest**

352 E. Camelback Road  
Suite 200  
Phoenix, Arizona 85012  
(602) 258-8850  
www.aclpi.org

**Staff**

Daniel J. Adelman,  
*Executive Director*  
Anne Ronan,  
*Staff Attorney*  
Jennifer B. Anderson,  
*Staff Attorney*  
Sam Schnarch,  
*Stan Marks Fellow*

**Board of Directors**

Bryn K. DeFusco,  
*President*  
Adriane Hofmeyr,  
*President-Elect*  
Lindsay Fiore,  
*Secretary*  
Tiffani Lucero Pastor,  
*Treasurer*

Robert Bartels  
Dr. Irene Márquez Biggs  
Jenna LaPrade Bouchard  
Beverly Damore  
Peter Davis  
Roopali H. Desai  
Herb Ely  
Stanley G. Feldman  
(Justice—Ret.)  
Stacy Gabriel  
D. Andy Gaona  
Joy Herr-Cardillo  
Eugene M. Kadish  
Stanley Lubin  
Patrick W. Mause  
Bruce Meyerson  
(Judge—Ret.)  
Joel W. Nomkin  
Susan M. Rotkis  
Bruce Samuels  
Joshua S. Sellers  
Tanveer A. Shah  
Lee Stein  
Geoffrey M. T. Sturr

## Suit Brought to Protect Individuals with Intellectual Disabilities

The Center has initiated litigation against Dignity Health Care of Arizona with the goal of securing health care coverage for children with developmental delays. Employees of Dignity Health, one of the largest healthcare providers in Arizona, are covered by a plan that is self-funded by their employer. The plan that Dignity offers its employees contains a “developmental delay exception,” which excludes from coverage therapies to treat any “delays in development” that do not result from acute illness or congenital defects. The examples given include Down syndrome and cerebral palsy, but the field of excluded conditions is actually much larger. Developmental delay can include any delay in developmental domains such as motor control, cognition, speech or language, personal and social functioning, and the practical activities of daily life, in children under five years old. Developmental delay is also frequently used to describe the condition of young children before they are old enough to be diagnosed with autism spectrum disorder. Moreover, many developmental delays, including cerebral palsy and Down syndrome, meet the criteria of an intellectual disability under the Diagnostic and Statistical Manual of Mental Disorders. By denying coverage to therapies meant to treat developmental delays, Dignity prevents individuals with those conditions from accessing necessary treatment.

The provision of speech and occupational therapies for children experiencing developmental delay can be crucial to the development of critical skills. These skills include motor control and function, sensory integration and coping mechanisms, mouth and facial muscle strength and control needed for speech and eating, and communication skills. Interruptions and loss of treatment, even momentarily, can have immense impacts on the lives of these children. Without regular therapeutic treatment, children with developmental delays can regress in these skills, possibly impacting their ability to grow and progress with their peers or develop necessary skills later in life. By denying coverage for speech and occupational therapies to treat developmental delays, Dignity jeopardizes the development and quality of life of its employees’ children.

The Center has partnered with Eleanor Hamburger of Sirianni Youtz Spoonmore Hamburger PLLC in Seattle, Washington to represent two children of current or former employees of Dignity who have been denied coverage for treatment for their

*(Continued on page 3)*

## Intellectual Disabilities (Cont.)

*(Continued from page 2)*

developmental delays. Ms. Hamburger specializes in claims under the Employee Retirement Income Security Act of 1974 (ERISA) and disability insurance coverage and has distinguished herself for her work and advocacy on behalf of insured individuals with disabilities. The Center's suit brings claims based on ERISA and the Mental Health Parity and Addiction Equity Act, arguing that the developmental disability exception constitutes a treatment limitation that is more restrictive than those applied to medical or surgical benefits or otherwise only applies to mental health or substance use disorder benefits. In addition to the Parity claims, the suit alleges that Dignity discriminates against children with disabilities under Section 1557 of the Affordable Care Act

by denying children with cerebral palsy, Down syndrome, or other developmental delays the benefits of and participation in a health program that receives federal funding.

The Center's suit asks the court to declare Dignity's developmental delay exception unlawful and require Dignity to cover all necessary treatment for children with ASD and developmental delays enrolled in its plan. The suit further asks the court to order Dignity to compensate plaintiffs for the costs paid out of pocket for their children to receive treatment and to remove the developmental delay exception from any current or future plan language.

## Center Files Lawsuit Challenging EPA's Failure to Control Air Pollution from Industrial Agriculture in Arizona

On August 13, 2021, the Center sued the Environmental Protection Agency for failing to require Arizona to control air pollution from industrial agriculture via proper permitting across most of the state. The Center represents the Center for Biological Diversity as petitioner.

The lawsuit asks the 9th Circuit Court of Appeals to overturn the EPA's approval of Arizona's blanket exemption from air-pollution permitting requirements for agricultural equipment. Emissions from diesel-burning engines on farm equipment contribute to ozone and particulate pollution,

also known as smog and soot. Manure from industrial animal agriculture leads to increasing precursors for particulate matter and ozone pollution.

Numerous emission-reduction opportunities exist in Arizona that, if implemented, could create livable-wage jobs at the same time as addressing the deadly air-pollution problem. For example, the EPA action could shift the state to powering its farm equipment with pollution-free solar panels instead of dirty diesel engines.

*(Continued on page 5)*

## Historic Victory (Cont.)

This year, the Legislature circumvented these requirements by cramming all sorts of laws into what are called Budget Reconciliation Bills (BRBs). The Center joined forces with co-counsel (and long-time Center Board Member) Roopali Desai of Coppersmith Brockelman, and sued to invalidate these laws. Our clients included a broad coalition of individuals and groups including the Arizona School Boards Association, the Arizona Education Association, Arizona Advocacy Network, Children's Action Alliance, and public school teachers, university professors, physicians, and parents of children in public schools. Among the provisions we challenged:

- A law prohibiting school districts from implementing mask mandates,
- A law prohibiting teaching vague concepts that have been mischaracterized as “critical race theory” and subjecting teachers to legal action and discipline,
- A law prohibiting universities from implementing certain COVID mitigation measures,
- A law prohibiting other governmental entities from implementing COVID mitigation measures, and
- Various measures within the “budget procedures” BRB pertaining to everything under the sun (but very little – if anything – having to do with budget procedures).

These provisions were crammed into bills with titles that simply said “budget reconciliation” or “budget procedures.” Obviously, these titles gave no notice that they contained laws banning mask mandates or the teaching of controversial subjects.

And in a textbook example of logrolling, the “Budget Procedures” bill included a hodgepodge of laws on unrelated subjects

covering everything from dog racing permitting; requirements for the Arizona Game and Fish to assist with voter registration; stripping local authority to pass COVID mitigation measures; amending the study committee on missing and indigenous peoples; creating a committee to review the election “audit”; and requiring the agreement of all unit owners to terminate a condominium.

Had we not sued, these laws would have gone into effect on September 30, 2021. Instead, on September 27, Superior Court Judge Katherine Cooper ruled that each of the laws violated the Constitution. She ruled that the title “budget reconciliation” gave no notice the law would include things like a mask mandate prohibition. And she ruled that the “budget procedures” bill is “classic logrolling – a medley of special interests cobbled together to force a vote for all or none.” Disappointingly, rather than being accountable for their disregard of the Constitution, the governor and various state actors lashed out at us (falsely claiming that the suit was brought on behalf of “outside left-wing groups,”) and attacked Judge Cooper as a “rogue judge.”

The State immediately appealed to the Arizona Supreme Court. In a triumph for the rule of law, the Supreme Court unanimously affirmed the trial court's order.

It's difficult to overstate the importance of this ruling. School districts will retain local control to implement reasonable COVID mitigation measures to keep children, teachers, and their families safer. Universities, community colleges, and others will be able to follow the science as to the appropriate measures that are necessary to fight this pandemic. But perhaps most important of all, the Supreme Court has told the Legislature and the Governor that even they must obey the Constitution.

## Environmental Advocacy Spurs New Pollution Controls

### Center's Action Will Result in Stronger Lead Pollution Controls in the Hayden Area

The U.S. Environmental Protection Agency recently proposed to require stricter control measures on airborne lead pollution in the Hayden, Arizona area. This move came in response to a letter from the Center giving notice of its intent to sue EPA over its failure to act on lead pollution in this area as required under the Clean Air Act.

The source of the lead pollution is the Hayden copper smelter owned by ASARCO. Because of lead emissions from the smelter, the Hayden area was declared in "nonattainment" of federal air quality standards for lead effective October 3, 2014. The main lead-bearing particles responsible for elevated lead concentrations in the Hayden nonattainment area are from: (1) crushed ore or concentrate; (2) dust from the "flash furnace" which turns the ore into copper matte; and (3) dust from the "converters" which are a further part of the smelting process.

People can be exposed to lead pollution by inhaling it or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, lead is quickly absorbed into the bloodstream and can result in a broad range of adverse and serious health effects including damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells.

Children are particularly vulnerable to lead exposure because their still-developing nervous systems are more sensitive to the effects of lead. Harmful impacts to children arising from lead exposure may include loss of IQ, poor academic achievement, long-term learning disabilities, and an increased risk of behavioral problems. Lead pollution is also deposited into the surrounding environment, contaminating soil and water and impacting the development of animals and plants.

## Industrial Agriculture (Cont.)

*(Continued from page 3)*

Controlling pollution from industrial agriculture is more important than ever. Several studies have shown that air pollution increases the risk of death from COVID-19. One very recent study determined that high smog levels contributed to the extremely high numbers of COVID-19 deaths in northern Italy.

Beyond human health concerns, air pollution from industrial agriculture harms wildlife and plants, both naturally occurring and commercial crops. It hurts forests by increasing forest fires, disease and insect infestations. Sensitive species at risk from polluted air exposure include cottonwood trees and blazing star flowers.



**ARIZONA CENTER FOR LAW**  
— IN THE PUBLIC INTEREST —

*Dedicated to ensuring government  
accountability and protecting the  
legal rights of Arizonans*

352 E. CAMELBACK ROAD  
SUITE 200  
PHOENIX, ARIZONA 85012

Nonprofit  
Organization  
U.S. Postage Paid  
Phoenix, Arizona  
Permit No. 1202

ADDRESS SERVICE REQUESTED

Please make any address or name changes to your mailing label and return it to the Center.  
Printed on Recycled Paper.

*Your support helps us continue our important work!*

**Enclosed is my contribution for:**

\_\_\$5,000 \_\_\$1,000 \_\_\$500 \_\_\$250 \_\_\$100 \_\_\$50 \_\_(other)

Or Monthly \$\_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

\_\_\_\_\_ I wish my donation to remain anonymous.

Payment: Check Enclosed (payable to Arizona Center for Law in the Public Interest) or

Charge: ☐ VISA ☐ MasterCard ☐ American Express

Card No. \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Or donate online at [www.ACLPI.org](http://www.ACLPI.org)**

***Thank you for your support!***

Your donation is tax-deductible to the extent allowed by law.