

## A Message from Our New Board President

By Andy Gaona



It was nearly thirteen years ago that I was first exposed to the Center. I watched former executive director Tim Hogan and former staff

attorney (and current Board member) Joy Herr-Cardillo argue in court that Arizona was not giving its English language learner students the educational opportunities guaranteed to them by federal law. And it was truly inspiring to know that there was an organization in Arizona willing to fight on behalf of those children against all odds, and against an opponent with limitless resources. The only problem, given my job at the time, was that I was sitting on the wrong side of the courtroom.

Three years of law school, nine years of practice, and two kids later, I now have the distinct privilege of serving as President of the Center's Board of Directors. While much has changed about Arizona in that time, the sad truth is that much has stayed the same: our public schools remain unequal and underfunded, our foster care system is failing our most vulnerable children, our leaders take steps

that threaten access to lifesaving healthcare, and the fight for affordable utility rates and clean energy sources is stymied by special interests. In short, Arizona still needs the Center, and the Center still needs your generous support. We hope that you will continue to stand with us, and maybe even tell a few of your friends that they should join.

### Ninth Circuit Allows Foster Care Case to Go Forward as Class Action

On April 26, 2019, the Center and our co-counsel won a significant victory in our battle to improve foster care when the Ninth Circuit Court of Appeals ruled that a lawsuit on behalf of all Arizona foster children can go forward as a class action. The lawsuit is based on repeated and systemic failures by the State and its Department of Child Safety (DCS) to fulfill their legal duties with respect to foster children. The Ninth Circuit's ruling is a key step forward in the Center's efforts to get foster children (and all those involved in caring for them) the help they so desperately need. The court rejected the State's arguments that each child must sue separately rather than allowing the plaintiffs to represent Arizona foster

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## Foster Care Case, Cont'd

children as a “class.” The court also rejected the State’s subsequent request for “rehearing” by a larger panel of judges.

In its opinion, the Ninth Circuit identified the numerous statewide practices alleged by plaintiffs that adversely affect foster children, including: “(1) failure to provide timely access to health care, including comprehensive evaluations, timely annual visits, semi-annual preventative dental health care, adequate health assessments, and immunizations; (2) failure to coordinate physical and dental care service delivery; (3) ineffective coordination and monitoring of DCS physical and dental services; (4) overuse of congregate care for children with unmet mental needs; (5) excessive caseworker caseloads; (6) failure to investigate reports of abuse timely; (7) failure to document ‘safety assessments’; (8) failure to close investigations timely; and (9) investigation delays.”

The Ninth Circuit ruled that these claims can go forward on behalf of all of Arizona’s foster children as a class. The court also affirmed the lower court’s certification of a subclass of foster children who are placed in “non-kinship” settings. The court vacated the lower court’s certification of a Medicaid subclass but remanded for a finding about whether that class should be recertified under what it said was the proper legal standard.

The case, *B.K. v. Snyder*, was originally filed in February 2015 in U.S. District Court for the District of Arizona. The plaintiffs are represented by the Center, the law firm of Perkins Coie LLP, and national advocacy organization Children’s Rights.

## Center Appeals River Non-Navigability Findings

In March 2019, the Center filed appeals in Maricopa County Superior Court to challenge findings by the Arizona Navigable Stream Adjudication Commission (ANSAC) that the Gila, Salt, and Verde Rivers were not “navigable” when Arizona became a state in 1912. ANSAC voted in 2015 and 2016 to determine these rivers were non-navigable but it did not issue final written reports until 2018. After the Arizona State Land Department declined to seek judicial review of ANSAC’s determinations, the Center filed appeals on behalf of Defenders of Wildlife (a national nonprofit conservation organization) and three Arizona river enthusiasts.

ANSAC reached its non-navigability findings despite extensive evidence submitted by the Center and the Land Department that the rivers meet the federal test for “navigability” in that they were used or susceptible to being used in their ordinary and natural condition for trade or travel. This evidence included numerous historical accounts of people *actually navigating* the rivers before and after statehood. It also included hours of testimony from people who have boated the rivers recreationally and commercially in recent years, and who testified the rivers would have been even *more* boatable in their natural condition before dams and diversion. One witness even made a trip down the lower Salt River in an exact replica of the boat used

by the Kolb brothers to explore the Colorado River in 1911.

This litigation is important because under the “public trust doctrine,” the State gained title to the beds of all navigable waters and must maintain them for public use and enjoyment. It cannot simply give away these priceless natural resources to private landowners and corporate interests (although the State has repeatedly tried to do just that). The Center has led the charge in enforcing the public trust doctrine in Arizona since the 1980s and will continue fighting to secure the Gila, Salt, and Verde Rivers for future generations. In fact, the Center’s clients are the only remaining plaintiffs in these actions – no other navigability proponents filed an appeal.

The Center filed its opening brief in the Salt River appeal on July 1st. Opening briefs in the Gila River and Verde River appeals are due on August 19th and September 23rd, respectively. The Superior Court is not expected to decide the appeals until sometime in 2020 and its rulings will be subject to further review by the Arizona Court of Appeals.

### ***We’re Having a Fall Event in Tucson!***

**Date is still TBD but probably in late  
October or early November – more  
information coming soon!**

## School Finance Litigation

### A Time to Recognize the Need for Perseverance and to Say Thanks to Our Brave Clients

**By Danny Adelman**

Twenty-five years ago this month the Center won one of the most important cases in Arizona history. In *Roosevelt v. Bishop*, the Arizona Supreme Court ruled that Arizona's school funding system was unconstitutional. Our system placed too much reliance on a local district's wealth and tax base. If your district couldn't (or wouldn't) pass a bond, you were stuck in crumbling schools, with no ability to afford decent facilities, textbooks, adequate technology, modern buses, *etc.*

It seems like a long time ago, but as a result of that case, well over a billion dollars was spent bringing aging, dilapidated buildings up to standard. A formula was established that would give money to schools every year to keep their facilities in good shape, and money was provided to buy the equipment, textbooks and technology that school districts need on an ongoing basis.

But then, the legislature slowly but surely dismantled the whole system. More and more state funding was taken away, and we returned to a system where—unless you live in a district that could afford to pass bonds and

overrides—your children got next to nothing. Facilities are literally crumbling. Districts can't afford to replace textbooks or computers. In Arizona, districts that are able to pass bonds and overrides have had 3 to 4 times as much capital funding compared to districts that can't. It's insane.

#### So now what?

Imagine you are a school district struggling to make ends meet. You are often at the mercy of state government bureaucrats who can approve or deny your attempt to replace a failing air conditioning system. You are always at the mercy of the legislature and governor, who have decimated public school funding for too many years. What do you do?

A lot of people tell you to play nice. Don't bite the hand that feeds you.

But you know the way the state has defunded public schools is outrageous. And it's not fair to your students or teachers. At some point, the question must be asked, who will be brave enough to file a lawsuit and seek to force the state to honor the mandate in Arizona's Constitution?

Thankfully, we have clients that answered that call and are allowing us to

*(Continued on page 5)*

## Corporation Commission Approves Electric Vehicle Implementation Plan

once again fight on behalf of our public school children. Not only do we represent four courageous school districts, we also represent the Arizona School Boards Association, the Arizona Education Association, and the Arizona School Administrators, and a private citizen taxpayer.

That's right. We represent labor (our kids' teachers) and management in this fight to force the government to obey the Constitution.

Our districts are Glendale Elementary, Crane Elementary (from Yuma), Elfrida (from a tiny town in southern Arizona), and Chino Valley Unified (from a town in Yavapai County).

On their behalf, and on behalf of all of our children (and those to come), we at the Center are fighting every day.

We thank our clients for having the gumption to buck the system. And, as always, we thank our Center supporters whose contributions make this possible.

At its July open meeting, the Arizona Corporation Commission approved an important electric vehicle (EV) "implementation plan." The plan provides guidance to electric utilities on how they can help expand much-needed EV infrastructure in Arizona, including charging stations, and offer electric rate designs that encourage EV owners to charge their vehicles at "off-peak" times, *i.e.*, after the daily peak in electricity demand has subsided. The Commission previously adopted a general EV policy statement that articulated these goals.

EV adoption is crucial to reducing greenhouse gases and attaining the health-based standard for ozone pollution in places like Maricopa County. Ground-level ozone attacks lung tissue, causes breathing and cardiovascular problems, and increases the risk of early death.

The Center and its clients helped shape the EV implementation policy. In particular, the Commission adopted a legal analysis submitted by the Center and Western Resource Advocates that says non-utility EV charging providers (such as workplaces or shopping centers) should not be regulated by the Commission in the same way as electric utilities. This will reduce barriers and help expand EV charging infrastructure, making it easier for EV owners to charge their vehicles even if they don't have a charger at home.

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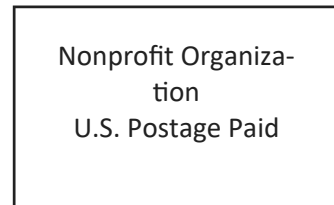


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