

The Center in the Time of COVID-19

For the last four months, I think all of us have been feeling like we are living through the 10 plagues, and watching—day after day—as the news gets bleaker. This has been a difficult four months for our State and our trajectory gives no reason to think we are nearing the end.

So what has this meant for the Center and the work we are doing to make our State a better place?

On the most superficial level, COVID-19 has affected the Center in the same ways it has affected most entities. We've learned to work remotely. We had to cancel our spring fundraiser. We've had to figure out the logistics involved in litigating massive cases when courts and agencies are themselves figuring out what life looks like during this pandemic.

But on a much deeper level, COVID-19 seems to be striking hardest at the very people that the Center has worked for decades to protect. That means we've had to work even harder so that the needs of our most vulnerable populations do not fall through the cracks.

Here are some examples:

Arizona has activated "Crisis Standards of Care" that affect what will be done when the demand for ventilators, ICU beds, and

other healthcare necessities overwhelms the ability of our hospitals and healthcare workers. Unfortunately, these standards are plagued with serious problems that could lead to discrimination against older Arizonans, those with disabilities, and communities of color when it comes to deciding who will get treatment. Further, many hospitals' strict "no visitor" policies can result in terrible consequences for patients with disabilities. Must an older patient with Alzheimer's or a young developmentally disabled or autistic adult really be deprived of a family member to help them during a hospitalization? That is precisely what is happening today. The Center is at the forefront of efforts to force Arizona to fix our Crisis Standards of Care to assure that all Arizonans—including those with dementia or autism or a host of other disabilities—are treated fairly.

The Center also continues to address problems that have only gotten worse due to COVID-19. For example, advocating for Arizona's public schools has always been at the core of *(continued on page 5)*

We're Holding an Online Auction September 18!

We'll have fabulous items for you to bid on, so keep an eye out for more information—you don't want to miss it!

See pp. 6-11 for a list of our event sponsors.

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

www.aclpi.org

Staff

Daniel J. Adelman,
Executive Director
Anne Ronan,
Staff Attorney
Jennifer B. Anderson,
Staff Attorney

Board of Directors

D. Andrew Gaona,
President
Bryn K. DeFusco,
President-Elect
Adriane J. Hofmeyr,
Secretary
Beverly Damore,
Treasurer

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

Disability Law

Center Steps in After State Wrongfully Denies Speech Aids to Children

ACLPI is on the frontlines of the latest battle on behalf of Arizona children with communication impairments who have been wrongfully denied medically necessary communication devices.

Arizona's Division of Developmental Disabilities denied 95% of the requests the Division received from children between July 1, 2019 and the end of February 2020 for Augmentative Alternative Communicative (AAC) devices. These devices are considered medically necessary for non-verbal individuals and are approved on a case-by-case basis. However, as the Center has learned, these requests were being arbitrarily denied using unlawful policies and procedures.

For the past six months, the Center has been working tirelessly to force the State to follow the law and to provide these important devices. Even though the State has recognized that many of the denials were simply illegal, it has failed to adequately fix the problem, and hundreds of deserving children still have not received their devices. Even when devices have been approved, the State has erected numerous illegal roadblocks.

This is an extremely important issue, especially now when schools are closed. The Center won't stop its advocacy until all the children who deserve these devices get them.

Listen to an interview with Center Attorney Anne Ronan, who has been leading this effort, here: <https://kjzz.org/content/1528506/attorney-arizonas-division-developmental-disabilities-still-denying-families>.

Air Quality

Center Sues EPA for Its Failure to Act on Particulate Pollution in West Pinal County

On April 14, 2020, the Center sued the U.S. Environmental Protection Agency (EPA) on behalf of Sierra Club over the EPA's failure to act on particulate air pollution in West Pinal County. For years, the EPA had been violating the Clean Air Act by failing to approve or disapprove Arizona's plan to address a dangerous type of particulate pollution known as "PM₁₀" in West Pinal County and by failing to determine that the area exceeds national air quality standards for PM₁₀.

Particulate 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, PM₁₀ 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 chronic lung disease, asthma, or the flu are particularly vulnerable to the effects of PM₁₀ pollution.

The EPA designated West Pinal County as "nonattainment" for PM₁₀ in 2012, and PM₁₀ levels in the area are among the worst in the nation. The health-based

standard for PM₁₀ is 150 micrograms per cubic meter. To meet the standard, an air quality monitor cannot measure concentrations greater than this more than once per year on average over a consecutive three-year period. However, multiple monitoring stations in West Pinal County violated the PM₁₀ standard from 2016 through 2018, the most recent period for which certified air quality data are available. During that time, a monitoring site near the City of Maricopa recorded PM₁₀ levels of 1,367 micrograms per cubic meter—nearly ten times the federal standard. Another monitoring site in Stanfield, near Casa Grande, recorded PM₁₀ levels of 1,100 micrograms per cubic meter, or 7 times the federal standard.

In response to a pre-lawsuit letter from the Center, the EPA proposed to find that West Pinal County failed to attain the PM₁₀ standard by the attainment deadline of December 31, 2018. On June 24, 2020, the EPA finalized its finding. This means West Pinal County has been reclassified from a "moderate" to a "serious" nonattainment area for PM₁₀. Within 18 months of the reclassification date, the State of Arizona will be required to submit an air quality plan that contains the "best available control measures" to address PM₁₀ pollution and bring the county into compliance with the standard by December 31, 2022.

Air Quality, cont'd

Phoenix Ranked Among Cities with Highest Air Pollution Levels

A report by the American Lung Association (ALA) recently put Phoenix among U.S. cities with the highest levels of air pollution. ALA ranked Phoenix #7 for high ozone days out of 228 metro areas, #10 for 24-hour particulate pollution out of 217 metro areas, and #7 for annual particulate pollution out of 20 metro areas.

This news should alarm anyone who lives, works, or plays in the Valley, because ozone and particulate pollution present serious health risks.

Ozone is created when nitrogen oxides and volatile organic compounds are exposed to heat and sunlight. Tailpipe emissions, power plants, and manufacturing operations are the main contributors to ozone. Ozone pollution can lead to premature death, cause breathing problems, exacerbate existing conditions such as asthma, and is accompanied by a host of long-term exposure risks.

Particulate pollution refers to a mix of minute liquid and solid particulate matter found in the air we breathe. Most are small enough to be invisible, but you might notice a haziness when there are higher levels of this type of pollution. Particulate pollution can trigger respiratory illness, hospitalization, and premature death. In fact, research has

linked particulate pollution to increased mortality in infants, increased hospitalizations for cardiovascular disease, and more severe asthma attacks in children.

The Center has been deeply involved in issues regarding Phoenix's notoriously poor air quality. We continually push federal, state, and local agencies to adhere to clean-air standards that are designed to protect the state's residents, including groups most susceptible to pollution: those with pre-existing health conditions, young children, and the elderly. We're unafraid to demand compliance with regulations that protect Arizona's communities.

In addition to recently suing the EPA for failing to act on particulate pollution in West Pinal County, we are also asking the Ninth Circuit Court of Appeals to reverse the EPA's decision with respect to numerous violations of the ozone standard in Phoenix, which the EPA is attempting to excuse on the ground they were supposedly "exceptional events" caused by a wildfire 300 miles away in San Bernardino, California.

ALA's report illustrates how critical our fight for clean air has become. Clean air is an important aspect of human health that affects quality of life for millions of Arizonans.

Foster Care Case Update

For more than five years, the Center has been engaged in litigation to improve care for children in the foster care system. Relying on a series of legal technicalities, the State has fought tooth and nail to try to have the case thrown out without any opportunity for a trial on the merits. Fortunately, courts at every level from the district court, to the court of appeals, to the United States Supreme Court have rejected the State's attempts, and we will finally get a chance to prove why Arizona is not living up to its

responsibilities to care for these children.

Trial will begin in late August. Our team will present evidence about the State's failure to provide mental and physical health services to children, overworked case workers, overuse of group homes, separation of siblings who have been removed from their homes due to abuse or neglect, and much more. The last thing these children need is to suffer further trauma and harm. The Center is proud to be able to advocate on their behalf.

The Center in the Time of COVID-19, cont'd.

what we do. For years before the pandemic, Arizona has ranked among the very worst states in the country when it comes to adequately funding our public schools.

Unfortunately, the pandemic has only served to heighten the inadequacy and inequity in our school finance system. When schools had to implement "distance learning," many news broadcasts showed teachers standing in parking lots handing out laptops or iPads to students so they could continue to learn during the pandemic. Sadly, for many of Arizona's poorer districts this was not an option. They can't afford computers for their students. Nor do they have the technology infrastructure that would allow them to teach online. The

divide between the "haves" and the "have nots" has never been more stark. The Center continues to fight to right this wrong and to force the State to adequately fund all of Arizona's school districts, including the ones that don't have the property wealth and ability to pass bonds and overrides.

There has never been a time when there was a bigger need to hold our government accountable to the people of Arizona. At the same time we have taken on more issues during COVID-19, we also continue to fight for our environment, for all of Arizona's foster children, and for adequate health care. We continue to rely on you, our supporters, whose generosity is what allows us to do this important work. Thank you.

Thank You

**to all of our event sponsors whose
unwavering support allows us to continue
fighting for the interests of all Arizonans
during these difficult times.**

We could not do what we do without you!

**ACLPI THANKS OUR
TITLE SPONSOR**

BEGAM

MARKS &

TRAULSEN

And



STEVE GERMAN
A L A W F I R M

ACLPI THANKS OUR DEFENDER OF JUSTICE SPONSORS



BEALE
MICHEAELS
SLACK
SHUGHART P.C.



VIPER LAW GROUP
INJURY ATTORNEYS

Bruce Meyerson & Mary Ellen Simonson

ACLPI THANKS OUR EQUALITY ENDORSOR SPONSORS

Akerink[®]
PR & MARKETING

Ballard Spahr
LLP

CELEBRATING
50
YEARS SINCE 1970
BURCH & CRACCHIOLO

COPPERSMITH

BROCKELMAN

LAWYERS

DAWSON
ROSENTHAL

TRIAL ATTORNEYS

DeFusco Law, P.L.C.

Serious Injury • Wrongful Death • Insurance Disputes
480-970-3000 www.defuscolaw.com

ACLPI THANKS OUR EQUALITY ENDORSOR SPONSORS



**The AtLee Family Foundation,
Patricia AtLee**

ACLPI THANKS OUR ADVOCATE SPONSORS

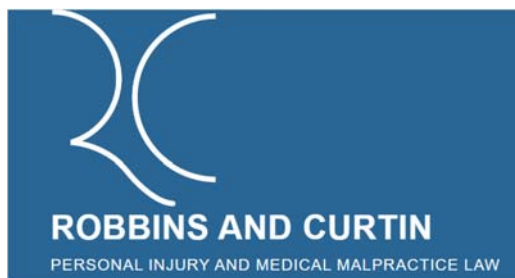


ACLPI THANKS OUR ADVOCATE SPONSORS

LANE & NACH, P.C.



R-O-I
PROPERTIES®
ENHANCING REAL ESTATE ASSETS



Private Wealth
Management

The Yalowitz
Zeidler Group
Sharon B. Zeidler
szeidler@rwbaird.com
theyzgroup.com



HARRIS POWERS & CUNNINGHAM

**Phil and Hannah Adelman
Tom Collins
Terry & Monica Goddard
Friends from Lewis Roca Rothgerber Christie
Patrick J. McGroder III
Marie Provine
Robert Sanderson
Danny & Cherie Adelman**



ARIZONA CENTER FOR LAW
— IN THE PUBLIC INTEREST —

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

514 W. ROOSEVELT ST.
PHOENIX, ARIZONA 85003

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

Thank you for your support!

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