



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**AMY SILVERMAN, et al. v. ADES
CV-23-00181-PR
255 Ariz. 348 (App. 2023)**

PARTIES:

Petitioner: Arizona Department of Economic Security (“DES”)

Respondents: Amy Silverman and TNI Partners, d/b/a Arizona Daily Star

FACTS:

Silverman is a freelance investigative journalist who works for the Arizona Daily Star. Silverman requested public records from DES, specifically Adult Protective Services reports, investigations, and other materials in select closed cases. DES denied her request, stating that the records were confidential under A.R.S. § 46-460, and that the statutory exception allowing redacted disclosure to a requestor engaged in “bona fide research” did not apply to journalists.

Silverman filed a special action, asking the superior court to compel production of the records based upon A.R.S. § 46-460(D)(8)’s bona fide research exception. DES filed a motion to dismiss arguing that, as a matter of law, journalists do not fall within the bona fide research exception of A.R.S. § 46-460(D)(8). The superior court denied DES’s motion to dismiss and granted Silverman’s request for disclosure, compelling DES to produce the records sought, subject to redaction.

The court of appeals reviewed the validity of the judgment de novo and held that the bona fide research exception of A.R.S. § 46-460(D)(8) is limited to research “for educational, administrative, or scientific purposes.” To qualify as “bona fide” under the exception, the court of appeals determined that prospective researchers must, at a minimum, provide detailed descriptions outlining: “the specific information sought and the project’s purpose, expected outcomes, and the methodology the researcher will employ to maintain the confidentiality of the records.” Journalists may, therefore, qualify for the bona fide research exception if they provide sufficient evidence to demonstrate this standard has been met. Finally, the court of appeals concluded that the record in this case was not sufficiently developed to determine whether Silverman’s request met the standard for the exception. The court of appeals affirmed the order denying DES’s motion to dismiss, vacated the judgment for Silverman, and remanded for further proceedings.

ISSUES:

1. Did the court of appeals err in deciding what qualifies as “bona fide research” under A.R.S. § 46-460(D)(8), which authorizes DES to disclose confidential records about vulnerable adults to a researcher “engaged in bona fide research,” if no personally identifying information is made available?

2. Are there any relevant state or federal constitutional considerations in determining whether journalists are included within the “bona fide research” exception under A.R.S. § 46-460(D)(8)?
3. Is the record on appeal sufficient to determine whether the request for records from DES meets the “bona fide research” exception under A.R.S. § 46-460(D)(8)?

STATUTES:

§ 46-460. Adult protective services information; confidentiality; allowed disclosures; violation; classification

A. Unless otherwise provided by law, all personally identifying information concerning any person who is involved in an adult protective services program, including the reporting source's identity, other than a perpetrator against whom an allegation of abuse, neglect or exploitation has been substantiated pursuant to § 46-458, and all information that is gathered or created by adult protective services and that is contained in adult protective services records is confidential and may not be released except as provided in subsections B, C and D of this section.

D. Employees of the department of economic security may release any information that is otherwise held confidential under this section, except the reporting source's identity, to the following or under any of the following circumstances:

8. Any person who is engaged in bona fide research, if no personally identifying information is made available, unless it is essential to the research and the director or the director's designee gives prior approval. If the researcher wants to contact a subject of a record, the subject's consent must be obtained by the department before the contact.

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