



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**REDGRAVE. v. DUCEY
CV-20-0082-CQ**

PARTIES:

Plaintiffs: Marcia A. Redgrave

Defendants: Doug Ducey, Governor; Thomas J. Betlach, in his official capacity as Director of the Arizona Health Care Cost Containment System; Arizona Department of Economic Security; and Arizona Division of Developmental Disabilities

FACTS:

The Arizona Department of Economic Security’s Division of Developmental Disabilities (“DDD”), contracts directly with caretakers who claim overtime pay under the Fair Labor Standards Act (“FLSA”). Redgrave works as an in-home caretaker for a disabled individual who is a beneficiary of Arizona Long-Term Care System (“ALTCS”). ALTCS is a DDD-operated Medicaid program where DDD functions as a managed care organization. Called an “independent provider,” Redgrave is hired directly by DDD.

Redgrave is responsible for the individual’s round-the-clock needs: personal hygiene, preparing meals, managing medical appointments, housecleaning, laundry, and assistance in daily activities, such as visiting friends, all allowing her little time off. In 2010, Redgrave and the individual moved to Arizona, where the individual became a beneficiary of ALTCS. Redgrave argued that she and other independent providers work twenty-four hours a day and, at the very least, that DDD’s method for calculating compensation hours violates federal regulations.

In February 2018, Redgrave filed a putative collective action “on behalf of herself and other similarly-situated Independent Providers” in Maricopa County Superior Court pursuant to 29 U.S.C. § 216(b), the Fair Labor Standards Act (“FLSA”), claiming damages.

She alleged that an independent provider like herself meets the definition of an “employee” of the DDD and that the DDD is a “third-party employer.” As such, she claimed the protections of the FLSA’s minimum-wage provision and its time-and-a-half overtime provision. *See* 29 U.S.C. § 206(a) (requiring employers to pay a minimum wage for each hour worked); *id.* § 207(a)(1) (requiring employers to pay employees “one and one-half times the regular rate” for each hour worked in a week in excess of forty hours); 29 C.F.R. § 552.102(a) (defining hours worked for a “live-in worker”). She sought awards of unpaid overtime, unpaid minimum wages, and liquidated damages, plus interest. She also sought a declaration that she and other similarly situated individuals are entitled to be paid for all the hours they work, including time-and-a-half for their overtime hours.

Redgrave sued her alleged employer, DDD, along with the Department of Economic Security (of which DDD is a division), Thomas Betlach in his official capacity as Director of the Arizona Health Care Cost Containment System, and Doug Ducey in his official capacity as Governor of

Arizona, (collectively, the “State”).

The State removed the case to federal court, asserted its sovereign immunity from such claims, and moved to dismiss the case. In the District Court, Redgrave claimed that Arizona has waived its sovereign immunity from FLSA claims as a matter of law. The District Court found that Arizona had not waived sovereign immunity, and Redgrave appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit certified this question to the Court:

CERTIFIED QUESTION:

Has Arizona consented to damages liability for a State agency’s violation of the minimum wage or overtime provisions of the federal Fair Labor Standards Act, 29 U.S.C. §§ 206–207?

STATUTE:

A.R.S. § 12-820.01. Absolute Immunity

A. A public entity shall not be liable for acts and omissions of its employees constituting either of the following:

1. The exercise of a judicial or legislative function.
2. The exercise of an administrative function involving the determination of fundamental governmental policy.

B. The determination of a fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to:

1. A determination of whether to seek or whether to provide the resources necessary for any of the following:
 - (a) The purchase of equipment.
 - (b) The construction or maintenance of facilities.
 - (c) The hiring of personnel.
 - (d) The provision of governmental services.
2. A determination of whether and how to spend existing resources, including those allocated for equipment, facilities and personnel.
3. The licensing and regulation of any profession or occupation.

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