



CLIENT NEWS BRIEF

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NINTH CIRCUIT HOLDS THAT UNDER CERTAIN CIRCUMSTANCES CHARTER SCHOOLS CANNOT BE SUED AS STATE ACTORS

The United States Ninth Circuit Court of Appeals recently held that a charter school that is governed by a private non-profit corporation, and the charter school's employees, cannot be sued as state actors for alleged federal civil rights violations. (Caviness v. Horizon Community Learning Center, Inc. (9th Cir. 2010) 590 F. 3d 806.)

Michael Caviness, a former teacher at the Horizon Community Learning Center ("Horizon"), a charter school located in Phoenix, Arizona, was placed on administrative leave for questionable conduct with a student. After investigating the matter, Horizon elected not to renew Caviness' teaching contract. When Caviness later applied for a job at a public school, he was not offered the position because Horizon's executive director refused to provide a reference. Caviness later requested an opportunity to meet with officials at Horizon to clear his name, but that request was also ignored.

Caviness sued Horizon and the executive director under the federal civil rights law known as Section 1983 (42 U.S.C. § 1983). Section 1983 allows individuals to sue state officials who, while acting under the "color of law," deprive an individual of his/her federal constitutional rights. Caviness alleged that Horizon deprived him of his Fourteenth Amendment due process rights by making false statements about him and by preventing him from obtaining work, without giving him an opportunity to clear his name.

To recover under Section 1983, an individual must show that the conduct causing the alleged deprivation of rights is directly attributable to government action. Caviness gave at least four separate reasons why Horizon and its employees should be treated as state actors for purposes of Section 1983. Caviness first pointed to the fact that Arizona state law designates charter schools as "public schools" and regulates their operation. Second, Caviness alleged that Horizon, by providing a public education, performs a function that is traditionally and exclusively the state's responsibility. Third, Caviness argued that Horizon is a state actor because Arizona law regulates the personnel matters of all charter schools, including Horizon. And finally, Caviness claimed that Horizon was a state actor because its employees were allowed to participate in the state's retirement benefits system.

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The court rejected all of Caviness' arguments, holding that the charter school, Horizon, was not a state actor for the purposes of Section 1983. In response to Caviness' first argument, the court held that while a private nonprofit corporation running a charter school is defined as a "public school" under state law and functions as a state actor for some purposes, it functions as a private actor in many other respects. The court gave the example of a public utility company, which is subject to state regulation but mostly operates as a private entity. Secondly, the Court held that while it is true that the state provides a public education, these services are not the exclusive domain of the state. Charter schools also provide students with a public education, although often in an alternative learning environment. In response to Caviness' third argument, the court noted that the statute which Caviness claimed regulated the personnel matters of charter schools actually exempts charter schools. And finally, with respect to both Caviness' third and fourth arguments, the Court noted that the United States Supreme Court has consistently held that the mere fact that a business is subject to state regulation does not automatically convert its actions into that of the state.

Although there are many similarities between Arizona's charter schools law and California's, it is not clear that the court would have reached the same conclusion if the lawsuit originated in California. In Wilson v. State Board of Education (1999) 75 Cal.App.4th 1125, a California appellate court concluded that charter schools, including those operated by nonprofit corporations, are part of the public school system for purposes of the California Constitution's requirement of a single state system of public schools. However, because many charter schools in California are governed by or as nonprofit public benefit corporations pursuant to Education Code section 47604, such charter schools may now point to the Caviness case as a defense against civil rights act cases filed under Section 1983.

For further information or if you have any questions concerning charter school issues, please contact any of our [seven](#) offices located statewide, or consult our [website](#).

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