U.S. SUPREME COURT

U.S. Term Limits, Inc., et al., v. Thornton, et al.,

___ U.S. ___, 95 D.A.R. 6496, No. 93-1456 (May 22, 1995).

Arkansas' Term Limit Amendment to State Constitution Restricting Candidate Eligibility for U.S. Congress Violates Federal Constitution

By a 5–4 vote, the U.S. Supreme Court held that congressional term limits enacted by states are unconstitutional; in a ruling which affects such laws in 23 states (including California), the Court opined that states may not place limits on the terms of members of Congress, and that federal term limits may only be enacted at the federal level by amending the Constitution. Writing for the majority, Justice John Paul Stevens stated that "allowing individual states to craft their own qualifications for Congress would thus erode the structure envisioned by the framers... to form a 'more perfect union.'"

U.S. NINTH CIRCUIT COURT OF APPEALS

Kindt v. Santa Monica Rent Control Board, et al.,

67 F.3d 266, 95 D.A.R. 13670, No. 94-55479 (Oct. 10, 1995).

City Rent Control Board May Regulate Length and Place of Public Comments at Meetings

In this proceeding, the U.S. Court of Appeals for the Ninth Circuit ruled that the Santa Monica Rent Control Board may adopt cregulations governing when the public may address the Board if the requirements are reasonable, content-neutral "time, place, and manner restrictions" that are not intended to suppress a particular viewpoint. In so deciding, the court noted that citizens are not entitled to exercise their first amendment rights whenever and wherever they wish; for example, the court explained that although a speaker at a public body's meeting may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, it may stop him if his speech becomes irrelevant or repetitious.

Voting Rights Coalition, et al., v. Wilson, et al.,

60 F.3d 1411, 95 D.A.R. 9798, No. 95-15449 (July 24, 1995).

California Must Comply with National Voter Registration Act of 1993

In his official capacity, Governor Wilson directed the appropriate officials of the state of California not to comply with the National Voter Registration Act of 1993 (42 U.S.C.A. section 1973gg-1 to -10), on constitutional grounds. In reviewing the constitutionality of the so-called "motor voter law," which directs states to provide voter registration where the state receives applications for motor vehicle driver's licenses, the Ninth Circuit explained that three provisions of the Constitution must be considered: Article I, section 4, which vests in Congress the power to alter state laws pertaining to the times, places, and manner of electing representatives and senators; Article I, section 2, which gives the states the power to fix the qualifications of the voters; and the Tenth Amendment.

After reviewing these provisions, the court concluded that Congress may require state agencies to carry out voter registration for the election of representatives and senators, and that in enacting the Act, Congress explicitly sought to regulate the times, places, and manner of electing only representatives and senators, not state and local officials. In response to Wilson's argument that the Act will have a significant impact on the state's registration procedures applicable to elections of state and local officials, the Ninth Circuit stated that it "cannot determine the extent to which, if at all, these changes impinge on the legitimate retained sovereignty of the states" under the Constitution, and that "[c]learly, the Constitution denies to the states any power to obstruct the exercise by Congress of its power to make or alter the times, places, and manner of electing representatives or senators." Accordingly, the court ordered Wilson and the state of California to comply with the law.

CALIFORNIA SUPREME COURT

Kopp v. Fair Political Practices Commission,

11 Cal.4th 607, (Nov. 30, 1995)

Court Declines to Rewrite Proposition 73

In a 4–3 decision, the California Supreme Court declined to reimpose campaign contribution limits in state and local elections when it refused to correct a flaw in an initiative approved by voters in 1988. In June 1988, voters approved two campaign reform initiatives; Proposition 73 took effect because it received more votes than Proposition 68, which would have given candidates some public funds. *[11:1 CRLR 153–54]* Proposition 73 imposed contribution limits in state and local races; individuals could contribute $1,000 to a candidate, political committees could contribute $2,500, and political parties $5,000. However, in 1990 a federal judge overturned Proposition 73, declaring that annual contribution limits based on a July-to-June fiscal year benefitted incumbents and hindered challengers; according to the judge, challengers would only have two years to raise funds, while incumbents have three or more. *[10:4 CRLR 189–90]* After Proposition 73 was overturned, Proposition 68 proponents asked the California Supreme Court to reactive that initiative; in declining, several justices said in footnotes that the court had not yet been asked to correct the flaw in Proposition 73 and reimpose it under the doctrine of judicial reconstitution. *[14:1 CRLR 181]* Accordingly, Proposition 73 sponsors asked the court to correct and reimpose that initiative.

Although the four justices who declined to reimpose Proposition 73 cited various reasons for their decision, the court in general stated that there is no way to rewrite the measure so that it would pass constitutional muster. In a dissenting opinion, Justice Marvin Baxter contended that the plurality opinion "thwarts the people's precious right of initiative, and will surely exacerbate the perceived crisis of confidence in our electoral system."

CALIFORNIA COURTS OF APPEAL

Planning and Conservation League, et al., v. Lungren,

38 Cal. App. 4th 497,
95 D.A.R. 12761,
No. C016761 (Sept. 22, 1995).

Statute Unlawfully Requires Certification That Initiative Includes No Dedicated Appropriation In Exchange for Campaign Contribution

The Third District Court of Appeal has held that freedom of speech is unconstitutionally abridged by a statute which requires a proponent of an initiative measure to certify that no dedicated appropriation has been included in the measure in exchange for a campaign contribution for purposes of qualifying the measure for the ballot.

SB 424 (Chapter 1189, Statutes of 1991) added former Elections Code section 5358 (now section 9607) to prohibit any person from including in the text of an initiative petition an appropriation of money for a particular project in exchange for either a campaign contribution or a pledge for a campaign contribution for the purpose of qualifying the initiative for the ballot. SB 424 also amended former Elections Code section 3502 (now section 9002) to require initiative proponents, prior to circulation of an initiative petition for signatures, to submit a sworn statement to the Attorney General (AG) that no appropriations prohibited by section 5358 have been included in the measure. Plaintiff PCL submitted an initiative measure to the AG for preparation of a title and summary, but did not include the sworn statement required by section 3502 disclaiming the inclusion in the measure of prohibited appropriations. The AG refused to prepare a title and summary for the proposed measure, and PCL commenced this action.

The Third District first concluded that strict scrutiny is applicable to this inquiry, since SB 424 has "more than an incidental impact on first amendment rights." In order to satisfy strict scrutiny, a law must be neither vague nor substantially over- or underinclusive, and it must further an overriding state interest yet be drawn with narrow specificity to avoid any unnecessary intrusion on first amendment rights. The court concluded that although SB 424 was enacted to, among other things, prevent corruption in the electoral process, it "is not narrowly tailored to achieve this legitimate goal." The court also found that SB 424 is underinclusive, in that it applies only to initiative measures in which appropriations are made for "financing, acquisition, or improvement of land, the construction or reconstruction of structures, improvements, parking structures, and related facilities"; according to the court, "[i]f the concerns with corruption which animated SB 424 are real, they are no less relevant to initiative measures involving matters unrelated to the acquisition or construction of real property."

ATTORNEY GENERAL'S OPINIONS

Opinion No. 95-320
(Aug. 9, 1995).

In this opinion, the Attorney General (AG) responded to Assemblymember Mickey Conroy's inquiry on whether an assemblymember may use campaign funds raised for his state legislative office to campaign for election to the office of county supervisor; whether an assemblymember may receive campaign funds from other candidates for use in campaigning for election to the office of county supervisor; and whether an assemblymember who is precluded from serving additional terms in the Assembly may donate his campaign funds to a public interest or educational nonprofit organization that the member establishes or controls.

Among other things, the AG noted that contributions to and expenditures of political campaign funds are governed by the Political Reform Act of 1974, Government Code section 81000 *et seq.* The AG also noted that, pursuant to Elections Code section 10003, a county may by ordinance or resolution limit campaign contributions in county elections. After reviewing other applicable law, the AG concluded that an assemblymember may use campaign funds, but not surplus campaign funds under current administrative enforcement practice, raised for his state legislative office to campaign for election to the office of county supervisor; an assemblymember may receive campaign funds from other candidates for use in campaigning for election to the office of county supervisor unless prohibited from doing so by county ordinance; and an assemblymember who is precluded from serving additional terms in the Assembly may donate his campaign funds to a public interest or educational nonprofit organization that the member establishes or controls if no substantial part of the proceeds will have a material effect on the member, his family, or his campaign treasurer, among other qualifications.

Opinion No. 95-311
(July 25, 1995).

In this opinion, the AG responded to Senator Quentin Kopp's query whether the legislative body of a local agency which is subject to the Ralph M. Brown Open Meeting Act, Government Code section 54950 *et seq.*, may prohibit members of the public, who speak during the time permitted on the agenda for public expression, from commenting on matters that are not within the subject matter jurisdiction of the legislative body. In reviewing the Brown Act, the AG focused on section 54954.3(a), which—among other things—requires that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by section 54954.2(b).

In concluding that the legislative body of a local agency may prohibit members of the public from commenting on matters which are not within the subject matter jurisdiction of the legislative body, the AG opined that the legislative intent in enacting section 54954.3(a) appears clear and unambiguous: "Public comment is to be allowed only on matters that are "within the subject matter jurisdiction of the legislative body." According to the AG, the statute does not grant the public the right to comment on matters outside the legislative body's subject matter jurisdiction; to conclude otherwise would require the AG to ignore the language of section 54954.3.

PROPOSITION 187 LEGAL CHALLENGES

The day after California voters approved Proposition 187—the so-called "Save Our State" anti-illegal immigration initiative *[14:4 CRLR 28–29]*—in the November 1994 election, attorneys filed eight separate legal challenges to the measure in state and federal courts; the plaintiffs in those actions include the California League of United Latin American Citizens, the Mexican American Legal Defense and Education Fund, and the Center for Human

Rights and Constitutional Law. *[15:2&3 CRLR 218; 15:1 CRLR 183]* The following is a status update on the challenges to the initiative:

• ***Federal Court.*** In January 1995, U.S. District Court Judge Mariana Pfaelzer issued a preliminary injunction prohibiting enforcement of the challenged provisions of Proposition 187 until a trial determines their constitutionality; Pfaelzer found that most of the measure will probably be found unconstitutional, and its enforcement would cause many people to suffer irreparable harm because they would go without medical care, be kicked out of public school, or fail to report crimes and abuse to police. *[15:2&3 CRLR 218; 15:1 CRLR 183]* On July 14, the U.S. Circuit Court of Appeals for the Ninth District upheld the preliminary injunction issued by Pfaelzer.

In May, a coalition of plaintiffs filed a motion for summary judgment in the federal proceeding; Pfaelzer held a July 26 hearing on the motion, and on September 7 asked attorneys for the state to submit further briefing on why she should let parts of the initiative stand if others are unconstitutional on their face.

On November 20, Pfaelzer granted plaintiffs' summary judgment motion in great part by striking down key portions of Proposition 187. Among other things, Pfaelzer found that the initiative's ban on public elementary and secondary education for illegal immigrants is directly contrary to a 1981 U.S. Supreme Court decision; and that it is unlawful for the state to deny to undocumented immigrants federally-funded health care and social welfare services to which they are otherwise entitled under federal law. In so doing, Pfaelzer acknowledged that California voters' "overwhelming approval of Proposition 187 reflects their justifiable frustration with the federal government's inability to enforce the immigration laws effectively." However, Pfaelzer ruled that "[n]o matter how serious the problem may be,...the authority to regulate immigration belongs exclusively to the federal government and state agencies are not permitted to assume that authority. The state is powerless to enact its own scheme to regulate immigration or to devise immigration regulations which run parallel to or purport to supplement federal immigration laws."

Pfaelzer also stated that further proceedings could be held on the sections of the initiative not declared legally invalid; at this writing, no trial date has been set.

• ***State Court.*** In November 1994, San Francisco Superior Court Judge Stuart Pollak also blocked enforcement of certain aspects of Proposition 187; specifically, Judge Pollak issued a temporary restraining order prohibiting enforcement of the measure's requirement that undocumented immigrants be kicked out of the state's public schools, as well as public colleges and universities. *[15:1 CRLR 183]* In February 1995, Pollak issued a preliminary injunction blocking enforcement of the measure's provisions regarding public education. *[15:2&3 CRLR 218]* At this writing, the state court action is pending in the discovery phase; no trial date has been set.