UNITED STATES SUPREME COURT

Eu v. San Francisco County Democratic Central Committee,

___U.S.___, 89 D.A.R. 2187, No. 87-1269 (Feb. 22, 1988).

Court Voids California Law Prohibiting Party Endorsements in Primaries

The U.S. Supreme Court unanimously struck down a California law that prohibited party endorsements in primaries as a violation of the First Amendment. The Court also stuck several laws governing the composition of parties' governing bodies, and regulating party chairs.

The suit was brought by members of all major political parties in California, various county central committees, and other political partisans. The suit challenged, *inter alia*, Elections Code section 11702, which barred central committee endorsements in primaries; Elections Code section 29430, which made it a misdemeanor for any candidate to claim party endorsement in a primary; and various provisions regulating parties' internal affairs by setting the numbers, terms, selection, and removal of party officials, terms of chairs of central committee chairs, and requiring that the chair alternate between citizens of northern and southern California. A challenge to a state ban on party endorsements in nonpartisan elections is being litigated separately. *See Unger v. Superior Court*, 37 Cal. 3d 612 (1984), and *Geary v. Renne*, No. C-87-4724 (N.D. Cal.), *stayed*, 856 F.2d 1456 (9th Cir. 1988).

The trial court granted summary judgment on all issues, holding that the statutes impermissibly violated First and Fourteenth Amendments rights to freedom of speech and free assembly. The Ninth Circuit affirmed. The Supreme Court vacated the decision and remanded in light of a recent decision. The Ninth Circuit again affirmed.

The Supreme Court, per Justice Marshall, joined by all other justices except Justice Stevens, who concurred, and Chief Justice Rehnquist, who took no part, affirmed. The Court held that the proffered reasons for the various statutes, all of which essentially stemmed from concerns over the statute's purported interest in preventing intraparty factionalism and infighting, were not sufficiently compelling to justify the clear infringements on speech and association. The Court raised, considered, and rejected these concerns for each statute. At bottom, the Court held that although a state is free to regulate the conduct of its elections to ensure that they are free of taint and are orderly, that interest does not extend into the internal workings of political parties. To justify the intrusions here, the state must meet an exacting test: it must show a "compelling governmental purpose", with a remedy "narrowly tailored to serve that interest." Justice Stevens wrote separately to express his discomfort with the formulation of that test, although he concurred in the result.

Blanchard v. Bergeron,

___U.S.___, 89 D.A.R. 2083, No. 87-1485 (Feb. 21, 1989).

Court Permits Attorneys' Fees in Excess of Contingent Fee Agreement in Civil Rights Case

The U.S. Supreme Court has unanimously held that in a civil rights case the plaintiff is not limited to an attorneys' fee equal to what the attorney could have received under the contingent fee agreement between the attorney and plaintiff.

The plaintiff brought suit in federal court for the Western District of Louisiana under 42 U.S.C. section 1983, alleging excessive force by a local sheriff. After trial by jury, the plaintiff was awarded $5,000 in compensatory damages and a like amount in punitive damages. He sought $40,000 in attorneys' fees and costs under section 1988. The trial court awarded $7,500 in fees, and $886.92 in costs. On appeal, the Fifth Circuit reduced the award, feeling bound by an earlier decision that a contingent fee agreement serves to cap the amount that may be awarded. The fee agreement here was for a standard 40% of the award. The Fifth Circuit reduced the award to $4,000. Other circuits have a contrary role, and do not cap attorneys' fee awards according to contingent contracts.

The Supreme Court, per Justice White, joined by all justices except Justice Scalia, who concurred in part and concurred in the judgment, held that "a contingent fee contract does not impose an absolute ceiling on an award of attorneys' fees and to hold otherwise would be inconsistent with the statute and its policy and purpose." The basis for a fee award is whatever is a reasonable fee, and although the attorneys' fee agreement is one factor, it is not dispositive or binding on the court. Just as an agreement might require too large an award to be reasonable, so too it might be inadequate to assure an award sufficient to compensate the attorney and attract counsel to civil rights cases. This is particularly true in civil rights cases, where the rights and remedies are frequently nonpecuniary in nature, and a fee fixed as a percentage of such nonpecuniary rights would often be inadequate.

Texas State Teachers Association v. Garland Indep. School Dist.,

___U.S.___, 89 D.A.R. 4012, No. 87-1759 (Mar. 28, 1989).

Entitlement to Attorneys' Fees Under Civil Rights Statute Not Limited to Cases Where Plaintiff Prevails on "Central Issue"

The U.S. Supreme Court has unanimously held that a civil rights plaintiff need not prevail on the "central issue" or achieve the "primary relief" sought in order to be the prevailing party eligible for an award of attorneys' fees under 42 U.S.C. section 1988.

Plaintiff teachers union filed suit in 1981 to challenge the school district's ban on communications among and with teachers regarding employee organization during the school day. In particular, the union challenged the district's regulation prohibiting representatives of the union from the school during the day, and banning use of the school mail or other internal communications for such organizations. Meetings between the teachers and organizations were permitted at the school during non-school hours, but only with the approval of the principal.

The trial court granted defendants' motions for summary judgment on all grounds, except for the challenge to the requirement of principal permission to meet after school hours, which the court called "trivial", as the regulation had never been enforced. On appeal, the Fifth Circuit affirmed and reversed. It agreed that there was no constitutional violation in banning union representatives from school grounds during the school day, under the Supreme Court's earlier decision in *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The appellate court reversed, however, on the issue of the bans on teacher-to-teacher communications regarding union activities, specifically holding unconstitutional the prohibition on teacher communication or use of the internal mail system. That judgment was summarily affirmed by the U.S. Supreme

Court. 479 U.S. 801 (1987).

The union then applied for attorneys' fees under section 1988. Both the trial and appellate courts rejected the request, holding that the union was not the prevailing party as interpreted in the Fifth Circuit. That circuit required that a party prevail on the "central issue" in the suit in order to be awarded fees as the prevailing party. Here, both courts held that the central issue was gaining access to school facilities and personnel during school hours, and the union lost on this point, despite obtaining success on "significant secondary issues."

The Supreme Court, per Justice O'Connor for a unanimous Court, reversed. The Court held that so long as the plaintiff succeeds on "any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit, the plaintiff has crossed the threshold to a fee award of some kind." Any other standard, the Court held, would be inconsistent with its earlier decision in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), which held that a party need not prevail on every issue raised in order to be entitled to fees under section 1988. At minimum, the Court held, "to be considered a prevailing party within the meaning of section 1988 the plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant."

U.S. Department of Justice, et al., v. Reporters Committee for Freedom of the Press, et al.,

___U.S.___, 89 D.A.R. 3715, No. 87-1379 (Mar. 22, 1989).

Criminal Record "Rap Sheet" Not Accessible Under Freedom of Information Act

The U.S. Supreme Court ruled that the public has no right of access to the FBI's criminal history files under the Freedom of Information Act (FOIA).

The FBI collects and maintains criminal record histories on millions of persons, using information compiled from various local, state, and federal law enforcement agencies. The FBI refused a request by a CBS news correspondent and the Reporters Committee for Freedom of the Press to release these criminal "rap sheets" on four reputed Mafia members. Respondents then filed suit in federal court under the FOIA, seeking the record of one Charles Medico, insofar as it contained "matters of public record." The parties filed cross-motions for summary judgment. The district court granted the Department of Justice's motion, finding that the information requested was protected under three separate exemptions of the FOIA. The U.S. Circuit Court of Appeals for the District of Columbia reversed.

The U.S. Supreme Court, per Justice Stevens (joined by Justices Rehnquist, White, Marshall, O'Connor, Scalia, and Kennedy, with a concurrence on this issue by Justices Blackmun and Brennan), reversed, holding that (1) the disclosure of such information to a third party is prohibited by Exemption 7(C) of the FOIA, because it "could reasonably be expected to constitute an unwarranted invasion of personal privacy"; and (2) in circumstances where Exemption 7(C) is facially applicable, the FOIA gives public access to government agency records only if the information has a bearing on the agency's own performance; that is, if it "is likely to contribute significantly to public understanding of the operations or activities of the government...." 5 U.S.C. section 552(a)(4)(A)(iii).

Justices Blackmun and Brennan, concurring in the judgment, objected to the majority's "categorical balancing" of the interests under Exemption (7)(C).

CALIFORNIA COURTS OF APPEAL

Consumers Union v. Fisher Development,

___Cal. App. 3d___, 89 D.A.R. 4108, No. A035787 (1st Dist., Mar. 28, 1989).

Consumer Group Has Standing To Enforce Unfair Business Practices Act

The First District Court of Appeal has held that a consumer group may sue under the Unfair Business Practices Act, Business and Profession Code section 17200, to enforce provisions of the Unruh Antidiscrimination Act, Civil Code section 51 *et seq.*

Consumers Union is a membership group and the publisher of *Consumer Reports* magazine. The group filed suit against a housing developer, challenging that an exclusive development did not meet the standards to be a senior citizen enclave, and so the developer was discriminating on the basis of age and against families with children. Plaintiffs did not have standing under the operative statute in the Unruh Act, Civil Code section 51, 51.2, 51.3, and 52, as the group was not an "aggrieved party" as that term is defined in the statutes. However, the group filed under the Unfair Business Practices Act, Business and Professions Code section 17200, which generally provides a cause of action to "any person" to enjoin any business practice that is in violation of any law. Defendants demurred on the ground that the group lacked standing under the Unruh Act and could not "bootstrap" standing through the Business and Professions Code. The trial court agreed and sustained the demurrer.

The First District, per Justices Barry-Deal, Merrill, and White, reversed. The court noted that section 17200 has consistently been held to confer the broadest standing to any person to enforce its provisions, and that the Act generally prohibits any business practice that is unfair, including any practice in violation of any other law.

City of Sacramento v. Drew,

___Cal. App. 3d___, 89 D.A.R. 1943 No. C002305 (Feb. 14, 1989).

Private Citizen Awarded Attorneys' Fees For Public Interest Advocacy In Response to City Action

The Third District Court of Appeal has ruled that a private citizen is entitled to attorneys' fees in a public interest advocacy case, even where the advocate does not initiate the action.

The City of Sacramento passed a resolution of intention to assess residents for the cost of certain school construction, under the authority of the Municipal Improvement Act of 1913. Property owner Drew protested, arguing that the construction was not authorized under the Act. The City filed an action to determine whether the assessment was authorized. Drew filed a motion for summary judgment, which the trial court granted. Drew then moved for attorneys' fees under Code of Civil Procedure section 1021.5. The court denied the motion.

The Third District Court of Appeal, per Justice Blease, reversed, holding that, according to section 1021.5, a private citizen is entitled to attorneys' fees in a matter that (1) has brought significant benefit to the public; (2) requires private enforcement; and (3) demonstrates a financial burden on the private citizen. Drew met all the statutory requirements and was therefore entitled to attorneys' fees. It was irrelevant that Drew did not commence the action, or that the court might have invalidated the bond act without his intervention.

CALIFORNIA SUPERIOR COURTS

People v. Safeway Stores, Inc., et al.,

No. 89576 (San Francisco Superior Court).

Proposition 65 Enforcement Suit To Be Heard

The San Francisco Superior Court cleared the way for the first major enforcement lawsuit under Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986.

The suit, brought by Attorney General John Van de Kamp, alleges that Safeway Stores and four other retailers failed to properly warn consumers of the dangers of cigar and pipe tobacco. Four environmental groups intervened in the suit. The toll-free service, which the store uses in an attempt to comply with Proposition 65, is also named. Twenty-five tobacco companies, originally named in the suit, agreed to put warning labels on their products, and settled in October 1988. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 83 for background information.)

Defendants' demurrer to the complaint of the Attorney General was rejected on March 15. In the latest development, San Francisco Superior Court Judge Stuart Pollak rejected defendants' demurrer to the complaint in intervention of the environmental groups, clearing the way for the lawsuit to proceed.

A related case involving the toll-free service, *Ingredient Communication Council, Inc. v. Van de Kamp*, No. 504601 (Sacramento Superior Court), was set for hearing on May 25.