

SUPREME COURT OF ARIZONA

Horne v. Polk

242 Ariz. 226 (2017) · No. CV-16-0052-PR · Decided May 25, 2017

SUMMARY

The Arizona Supreme Court held that due process prohibits the same agency official from serving as the accuser, advocate, and final decisionmaker in an administrative campaign-finance enforcement proceeding. Because Sheila Polk issued the initial violation order, participated in prosecuting the matter before an administrative law judge, and later issued the final agency decision, the court found an intolerable risk of bias. The court vacated the superior court and court of appeals decisions and remanded for a final decision by a neutral decisionmaker.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Justice Bolick; Chief Justice Bales; Vice Chief Justice Pelander; Justice Brutinel; Chief Judge Eckerstrom; Judge Howard; Judge Wright
JURISDICTION	Arizona
DECIDED	May 25, 2017
DOCKET	CV-16-0052-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	Appellants sought review of an administrative campaign-finance enforcement decision. The Arizona Supreme Court granted review of whether the combination of prosecutorial and adjudicative functions in the same agency official violated due process.
STANDARD OF REVIEW	De novo review of the constitutionality of the administrative procedure.
PRECEDENTIAL VALUE	Published Arizona Supreme Court opinion; precedential.
PARTIES	Thomas Horne, individually, Thomas Horne for Attorney General Committee, Kathleen Winn, individually, Business Leaders of Arizona v. Sheila Sullivan Polk, Yavapai County Attorney

TOPICS

procedural due process

due process

agency adjudication

administrative law

judicial review of agency action

PRACTICE AREAS

administrative law

constitutional law

election law

campaign finance

QUESTIONS PRESENTED

1. Whether due process permits the same agency official to issue the initial determination of a campaign-finance violation, participate materially in prosecuting the matter before an administrative law judge, and then issue the final agency decision.
2. What remedy is appropriate for a due-process violation caused by the lack of a neutral administrative decisionmaker.

HOLDINGS

1. The Fourteenth Amendment's due-process guarantee does not permit the same person to serve as an accuser, advocate, and final decisionmaker in an agency adjudication. Although an agency may generally combine investigative and adjudicative functions, the same official may not make the initial legal determination, materially participate in prosecution or advocacy, and then make the final agency decision.
2. An agency head may supervise personnel involved in investigation and prosecution, but if the agency head will make the final decision, the agency head must be isolated from advocacy functions and strategic prosecutorial decisionmaking and must supervise prosecutorial personnel in an arms-length fashion.
3. Appellants were entitled to a final administrative determination by a neutral decisionmaker; the ALJ decision did not automatically become final because Polk acted within the statutory thirty-day period.

KEY QUOTATIONS

“due process does not permit the same individual to issue the initial decision finding violations and ordering remedies, participate personally in the prosecution of the case before an administrative law judge (“ALJ”), and then make the final agency decision that will receive only deferential judicial review.” (242 Ariz. at 226, ¶ 1)

“We hold that due process does not allow the same person to serve as an accuser, advocate, and final decisionmaker in an agency adjudication.” (242 Ariz. at 235, ¶ 27)

“We therefore remand the matter to the current Attorney General’s Office, which does not have a conflict, for a final administrative decision.” (242 Ariz. at 236, ¶ 30)

FACTUAL BACKGROUND

The Secretary of State determined that there was reasonable cause to believe Thomas Horne, Kathleen Winn, and their campaign committees had violated Arizona campaign-finance laws through illegal coordination,

excessive contributions, and illegal contributions. Polk investigated, issued a twenty-five-page compliance order, and directed Horne and his campaign to refund approximately \$397,000. After appellants requested an administrative hearing, Polk participated in preparing and strategizing the prosecution before the ALJ, rejected the ALJ's recommendation, and issued the final agency decision affirming her own initial order.

PROCEDURAL HISTORY

The Arizona Secretary of State found reasonable cause to believe that appellants had violated campaign-finance laws, and Polk issued a compliance order requiring amended reports and refunds. After an administrative hearing, an ALJ rejected the illegal-coordination claim and recommended vacatur, but Polk rejected that recommendation and affirmed her prior order. The Maricopa County Superior Court affirmed, and the court of appeals affirmed on the ground that appellants had not shown actual bias. The Arizona Supreme Court vacated both lower-court decisions and remanded for a neutral administrative decisionmaker.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the decisions of the Maricopa County Superior Court and the court of appeals, and remand to the current Attorney General's Office, which does not have a conflict, for a final administrative decision by a neutral decisionmaker. The court expressed no opinion on the merits of the campaign-finance claims.

CASES CITED

- Gallardo v. State, 236 Ariz. 84, 87 ¶ 8, 336 P.3d 717, 720 (2014)
- Comeau v. Arizona State Board of Dental Examiners, 196 Ariz. 102, 108 ¶ 26, 993 P.2d 1066, 1072 (App. 1999)
- Gaveck v. Arizona State Board of Podiatry Examiners, 222 Ariz. 433, 436 ¶ 11, 215 P.3d 1114, 1117 (App. 2009)
- Withrow v. Larkin, 421 U.S. 35, 46-58 (1975)
- In re Murchison, 349 U.S. 133, 133-37 (1955)
- Marshall v. Jerricho, Inc., 446 U.S. 238, 243 (1980)
- Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust, 508 U.S. 602, 611, 618-20 (1993)
- Williams v. Pennsylvania, 136 S. Ct. 1899, 1905-10 (2016)
- Botsko v. Davenport Civil Rights Commission, 774 N.W.2d 841, 849-50, 853 (Iowa 2009)
- American General Insurance Co. v. Federal Trade Commission, 589 F.2d 462, 463-65 (9th Cir. 1979)
- Trans World Airlines, Inc. v. Civil Aeronautics Board, 254 F.2d 90, 91 (D.C. Cir. 1958)
- Nightlife Partners, Ltd. v. City of Beverly Hills, 133 Cal. Rptr. 2d 234, 248-49 (Cal. Ct. App. 2003)
- Rouse v. Scottsdale Unified School District No. 48, 156 Ariz. 369, 371, 373, 752 P.2d 22, 24, 26 (App. 1987)
- Taylor v. Arizona Law Enforcement Merit System Council, 152 Ariz. 200, 206, 731 P.2d 95, 101 (App. 1986)

- Lyness v. Pennsylvania State Board of Medicine, 605 A.2d 1204, 1209, 1211 (Pa. 1992)
- Amos Treat & Co. v. Securities & Exchange Commission, 306 F.2d 260, 266-67 (D.C. Cir. 1962)
- Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System Administration, 206 Ariz. 1, 8 ¶ 29, 75 P.3d 91, 98 (2003)

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