SUPREME COURT OF ALASKA

State, Commercial Fisheries Entry Commission v. Carlson

191 P.3d 137 (Alaska 2008) · No. S-11677 · Decided April 11, 2008

SUMMARY

The Alaska Supreme Court held that Alaska's former three-to-one nonresident commercial fishing fee scheme was not rationally related to the goal of equalizing fisheries-management burdens and therefore violated the Privileges and Immunities Clause. The court held that substantial, rather than precise, equality is required and vacated the superior court's refund order to permit application of a reasonable margin of error. The case was remanded for further proceedings concerning permissible variations and refunds.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Justice; Matthews, Justice; Eastaugh, Justice; Fabe, Justice
JURISDICTION	Alaska
DECIDED	April 11, 2008
DOCKET	S-11677
DISPOSITION	vacated
PROCEDURAL POSTURE	The State appealed from a superior court order granting the class's cross-motion for summary judgment and ordering refunds to nonresident commercial fishermen whose cumulative fees exceeded the permissible resident-nonresident differential.
STANDARD OF REVIEW	Awards of damages are reviewed for abuse of discretion; legal questions, including compliance with the Supreme Court's mandate, sufficiency of findings for appellate review, waiver, and constitutionality of the fee differential, are reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion of the Alaska Supreme Court
PARTIES	State of Alaska, Commercial Fisheries Entry Commission v. Donald H. Carlson, Warren Hart, Gerard Haskins, Stephen R. Libby, Earl Weese, Lyla C. Weese, Class members represented by appellees

TOPICS

privileges or immunities clause · federalism · constitutional law · administrative law · remedies

PRACTICE AREAS

constitutional law · administrative law · taxation · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether historical nonresident commercial fishing fees must be compared with the permissible differential on an individual rather than collective basis.
2. Whether the superior court correctly determined that the State was liable for refunds to individual class members whose cumulative payments exceeded the permissible differential.
3. Whether Alaska's three-to-one nonresident fee scheme bears a substantial relationship to the legitimate objective of equalizing the fisheries-management burden between residents and nonresidents under the Privileges and Immunities Clause.
4. Whether the superior court erred by requiring precise equality, rather than substantial equality, when calculating retrospective refunds.

HOLDINGS

1. Historical nonresident fees must be compared individually with the corresponding resident fee and permissible differential; the State may not use collective averaging across permit and license classes to establish constitutional compliance.
2. The superior court properly determined that the State was liable under the Privileges and Immunities Clause for individual class members whose cumulative nonresident payments exceeded the relevant resident fee plus the permissible differential.
3. The three-to-one nonresident fee scheme was not rationally or substantially related to the legitimate objective of equalizing residents' and nonresidents' fisheries-management burdens and therefore violated the Privileges and Immunities Clause.
4. The Privileges and Immunities Clause requires substantial, not precise, equality between the nonresident fee differential and the resident contribution to fisheries-management costs; incidental inequality within a rational fee system is constitutionally permissible.
5. In this case, an allowable margin of error may be found in a range up to fifty percent, subject to the accuracy reasonably attainable and the circumstances of individual cases.

KEY QUOTATIONS

> “*the differential between individual resident and nonresident permit fees must be substantially equal — but need not be precisely equal — to the contribution of each Alaska resident to fisheries management.*” (191 P.3d at 139)

> “*From this case law, we conclude that an allowable margin of error may be found in the range up to fifty percent.*” (191 P.3d at 148)

> *“A fee scheme substantially related to the state's goal will guarantee substantial, rather than precise, equality.”* (191 P.3d at 148)

FACTUAL BACKGROUND

Alaska charged nonresident commercial fishermen higher license and permit fees than residents, historically using a three-to-one fee ratio. The fees were based on permit price and fishing profits rather than the State's fisheries-management costs, which varied substantially among fisheries and over time. The class sought refunds for amounts paid above the permissible differential calculated from the resident contribution to fisheries management. The superior court ordered individualized refunds using precise equality between actual nonresident fee differentials and the allowable differential.

PROCEDURAL HISTORY

Nonresident commercial fishermen filed a class action in 1984 challenging Alaska's higher commercial fishing license and permit fees for nonresidents under the Privileges and Immunities Clause and the Commerce Clause. In three prior decisions, the Alaska Supreme Court established the governing constitutional framework, the permissible differential formula, and the relevant fisheries costs, then remanded for further proceedings. On the latest remand, the superior court required individualized accounting and ordered refunds based on precise equality; the State appealed. The Supreme Court vacated the refund portion of the order and remanded for application of a substantial-equality standard.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The superior court must reconsider the refund calculation using a substantial-equality standard rather than precise equality. It must determine whether variations between actual nonresident fee differentials and permissible differentials are incidental and constitutionally tolerable or substantial and unconstitutional, applying an appropriate reasonable margin of error and resolving the factual question concerning possible refunds for 2003 and 2004.

CASES CITED

- Carlson v. State, Commercial Fisheries Entry Commission, 798 P.2d 1269 (Alaska 1990)
- Carlson v. State, Commercial Fisheries Entry Commission, 919 P.2d 1337 (Alaska 1996)
- State, Commercial Fisheries Entry Commission v. Carlson, 65 P.3d 851 (Alaska 2003)
- Breck v. Moore, 910 P.2d 599, 606 (Alaska 1996)
- Alaska Wildlife Alliance v. State, 74 P.3d 201, 205-207 (Alaska 2003)
- Toomer v. Witsell, 334 U.S. 385, 397 (1948)
- Austin v. New Hampshire, 420 U.S. 656, 661-663, 668 (1975)
- Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 284 (1985)

- Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 291-297, 313-314 (1998)
- Travelers' Insurance Co. v. Connecticut, 185 U.S. 364, 369, 371 (1902)
- Travis v. Yale & Towne Manufacturing Co., 252 U.S. 60, 81 (1920)
- Fulton Corp. v. Faulkner, 516 U.S. 325, 334 n. 3 (1996)
- Wyoming v. Oklahoma, 502 U.S. 437, 455 (1992)
- Maryland v. Louisiana, 451 U.S. 725, 760 (1981)
- Maxwell v. Bugbee, 250 U.S. 525, 543 (1919)
- Hans Rees' Sons, Inc. v. North Carolina ex rel. Maxwell, 283 U.S. 123, 132-136 (1931)
- Norfolk & Western Railway v. Missouri State Tax Commission, 390 U.S. 317, 326 (1968)
- Container Corporation of America v. Franchise Tax Board, 463 U.S. 159, 181, 184 (1983)
- Moorman Manufacturing Co. v. Bair, 437 U.S. 267, 274-275 (1978)
- Tangier Sound Waterman's Association v. Pruitt, 4 F.3d 264, 267 (4th Cir. 1993)
- Baldwin v. Fish & Game Commission of Montana, 436 U.S. 371, 389-390 (1978)