

SUPREME COURT OF WASHINGTON

San Juan County v. No New Gas Tax

160 Wn. 2d 141 (2007) · Decided April 26, 2007

SUMMARY

The Washington Supreme Court considered whether radio talk show broadcasts supporting a ballot initiative constituted reportable campaign contributions under Washington's Fair Campaign Practices Act. The court held that the broadcasts fell within the statutory media exemption because they occurred during regularly scheduled program content on a station not controlled by a candidate or political committee. It reversed dismissal of the political committee's counterclaims and remanded, while affirming denial of attorney fees to the prosecutors.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; Johnson, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.
JURISDICTION	Washington
DECIDED	April 26, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct review of an order dismissing NNGT's constitutional counterclaims under Washington Civil Rule 12(b)(6), with a cross-appeal from the denial of attorney fees. The trial court had previously entered a preliminary injunction requiring disclosure of the value of radio broadcasts supporting a ballot initiative and later voluntarily dismissed the prosecutors' remaining claims.
STANDARD OF REVIEW	The propriety of the preliminary injunction was reviewed for abuse of discretion, with purely legal statutory-construction questions reviewed independently. Dismissal under CR 12(b)(6) was reviewed de novo. The denial of attorney fees was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	No New Gas Tax, Jeffrey Davis v. San Juan County, City of Kent, City of Auburn, City of Seattle

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether radio broadcasts supporting a ballot initiative during the content portion of regularly scheduled talk-radio programs constituted reportable campaign contributions under the Fair Campaign Practices Act.
2. Whether the trial court improperly issued a preliminary injunction requiring disclosure of the value of those broadcasts.
3. Whether the trial court properly dismissed NNGT's constitutional counterclaims under CR 12(b)(6).
4. Whether the prosecutors were entitled to attorney fees under RCW 42.17.400(5) or 42 U.S.C. § 1988.

HOLDINGS

1. The broadcasts fell within the statutory media exemption because they occurred during the content portion of regularly scheduled radio programs, the broadcaster did not normally require payment for that content time, the station served as a regular news medium, and the station was not controlled by a candidate or political committee. The broadcasts therefore were not campaign contributions subject to disclosure.
2. The trial court improperly granted the preliminary injunction because the prosecutors failed to establish a clear legal or equitable right to disclosure.
3. The CR 12(b)(6) dismissal was improper and had to be reversed because it rested on the erroneous legal conclusion that the radio broadcasts were reportable contributions.
4. The prosecutors were not entitled to attorney fees under RCW 42.17.400(5) or 42 U.S.C. § 1988 because the trial court's fee award was discretionary and the prosecutors did not prevail on the principal issues.

KEY QUOTATIONS

“We hold that the radio broadcasts at issue fall within the statutory media exemption” (160 Wn. 2d at 141, 147)

“We agree with the Federal Election Commission that for the media exemption to apply, the publication need not be fair, balanced, or avoid express advocacy or solicitations.” (160 Wn. 2d at 162-63)

“The regulation also accords with the federal media exemption.” (160 Wn. 2d at 163)

“The statutory media exemption, RCW 42.17.020(15)(b)(iv), excludes from the definition of “contribution” political advocacy for or against a political campaign by the hosts of a regularly scheduled talk show, broadcast by a radio station that is not controlled by a candidate or political committee.” (160 Wn. 2d at 166)

FACTUAL BACKGROUND

No New Gas Tax was a political committee supporting Initiative 912, which sought to repeal a statewide fuel tax. Radio hosts Kirby Wilbur and John Carlson regularly broadcast political commentary on station 570 KVI, owned by Fisher Communications, and used portions of their regularly scheduled content programming to criticize the fuel tax, support the initiative, solicit funds and volunteers, and encourage petition activity. Fisher charged for commercial advertising time but did not normally charge for content time on the hosts' programs. Prosecutors sought to have the value of the broadcasts reported as an in-kind campaign contribution, and the trial court ordered NNGT to disclose \$20,000 in purported contributions.

PROCEDURAL HISTORY

Prosecutors sued NNGT for allegedly failing to report radio broadcasts and related media support as campaign contributions under the Fair Campaign Practices Act. The trial court issued a preliminary injunction requiring disclosure, then dismissed NNGT's counterclaims under CR 12(b)(6) based on its conclusion that the broadcasts were reportable contributions, while denying the prosecutors' request for attorney fees. The Washington Supreme Court accepted direct review, reversed the dismissal, remanded the counterclaims for further proceedings, and affirmed the denial of attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion on NNGT's counterclaims. The court affirmed the trial court's denial of attorney fees to the prosecutors.

CASES CITED

- Rabon v. City of Seattle, 135 Wn. 2d 278, 957 P.2d 621 (1998)
- Wash. Fed'n of State Employees v. State, 99 Wn. 2d 878, 665 P.2d 1337 (1983)
- Kucera v. Dep't of Transp., 140 Wn. 2d 200, 995 P.2d 63 (2000)
- Fed. Way Family Physicians, Inc. v. Tacoma Stands Up for Life, 106 Wn. 2d 261, 721 P.2d 946 (1986)
- Isthmian S.S. Co. v. Nat'l Marine Eng'rs Beneficial Ass'n, 41 Wn. 2d 106, 247 P.2d 549 (1952)
- Alderwood Assocs. v. Wash. Envtl. Council, 96 Wn. 2d 230, 635 P.2d 108 (1981)
- Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn. 2d 1, 43 P.3d 4 (2002)
- Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986)
- Fed. Election Comm'n v. Phillips Publ'g Co., 517 F. Supp. 1308 (D.D.C. 1981)
- Reader's Digest Ass'n v. Fed. Elections Comm'n, 509 F. Supp. 1210 (S.D.N.Y. 1981)
- Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 110 S. Ct. 1391, 108 L. Ed. 2d 652 (1990)
- First Nat'l Bank v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)
- Mills v. Alabama, 384 U.S. 214, 86 S. Ct. 1434, 16 L. Ed. 2d 484 (1966)
- N.Y. Times v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)

- Wash. State Republican Party v. Wash. Pub. Disclosure Comm'n, 141 Wn. 2d 245, 4 P.3d 808 (2000)
- Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 42 L. Ed. 2d 659 (1976)
- Shays v. Fed. Election Comm'n, 414 F.3d 76 (D.C. Cir. 2005)
- Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n, 133 Wn. 2d 229, 943 P.2d 1358 (1997)
- State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 140 Wn. 2d 615, 999 P.2d 602 (2000)
- Bravo v. Dolsen Cos., 125 Wn. 2d 745, 888 P.2d 147 (1995)
- Tenore v. AT&T Wireless Servs., 136 Wn. 2d 322, 962 P.2d 104 (1998)
- Hoffer v. State, 110 Wn. 2d 415, 755 P.2d 781 (1988)
- Am. States Ins. Co. v. Symes of Silverdale, Inc., 150 Wn. 2d 462, 78 P.3d 1266 (2003)
- Ermine v. City of Spokane, 143 Wn. 2d 636, 23 P.3d 492 (2001)
- State ex rel. Pub. Disclosure Comm'n v. Rains, 87 Wn. 2d 626, 555 P.2d 1368 (1976)
- Seeber v. Pub. Disclosure Comm'n, 96 Wn. 2d 135, 634 P.2d 303 (1981)
- McConnell v. Fed. Election Comm'n, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003)