

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Mark Lee Dickson and Right to Life East Texas v. The Afiya Center
and Texas Equal Access Fund

No. 05-20-00988-CV (Tex. App.—Dallas Oct. 25, 2021) · No. No. 05-20-00988-CV · Decided October 25, 2021

SUMMARY

Justice Schenck dissents from the denial of en banc reconsideration in an interlocutory appeal involving defamation and conspiracy-to-defame claims arising from statements about abortion, the City of Waskom’s ordinance, and abortion-rights organizations. The dissent argues that the challenged statements constitute opinion or rhetorical hyperbole concerning matters of public concern, are protected by the First Amendment and Texas Constitution, and should be dismissed under the Texas Citizens Participation Act.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David J. Schenck
JURISDICTION	Texas
DECIDED	October 25, 2021
DOCKET	No. 05-20-00988-CV
DISPOSITION	other
PROCEDURAL POSTURE	Dissent from the denial of appellants' request for en banc reconsideration in an interlocutory appeal from the denial of a motion to dismiss defamation and conspiracy-to-defame claims under the Texas Citizens Participation Act.
STANDARD OF REVIEW	Independent appellate examination of the entire record is required when First Amendment issues are presented; whether statements are opinion or rhetorical hyperbole rather than actionable fact is a question of law for the court.
PRECEDENTIAL VALUE	Dissenting opinion; nonprecedential as to its reasoning
PARTIES	Mark Lee Dickson, Right to Life East Texas v. The Afiya Center, Texas Equal Access Fund

TOPICS

free speech

defamation

first amendment

motions to dismiss

appellate procedure

PRACTICE AREAS

constitutional law

defamation

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the challenged statements constituted protected opinion or rhetorical hyperbole rather than actionable statements of fact under Texas defamation law.
2. Whether the Texas Citizens Participation Act required prompt dismissal of claims targeting speech on matters of public concern when the plaintiffs could not establish a prima facie case.
3. Whether applying Texas defamation law to impose litigation costs or damages for the challenged political speech would violate the First and Fourteenth Amendments or the Texas Constitution.
4. Whether the denial of TCPA dismissal should have been reversed and the case remanded with instructions to award appropriate attorney's fees.

HOLDINGS

1. In Justice Schenck's dissenting view, statements characterizing abortion as murder and abortion-related organizations as criminal organizations were opinions or rhetorical hyperbole on a hotly debated matter of public concern, not actionable factual assertions.
2. In Justice Schenck's dissenting view, the TCPA required the court to promptly dismiss the lawsuit because it targeted constitutionally protected political speech and the plaintiffs could not establish a prima facie case.
3. In Justice Schenck's dissenting view, state judicial enforcement of defamation law could not constitutionally impose civil liability or litigation-based suppression on protected political rhetoric concerning abortion, *Roe v. Wade*, and a local ordinance.

KEY QUOTATIONS

“The constitution protects Dickson’s right to state his opinion that life begins at conception and, as a result, that abortion is murder.” (at 12)

“The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised.” (at 15)

“This lawsuit seeks to chill constitutionally protected speech and advocacy.” (at 17)

FACTUAL BACKGROUND

Mark Lee Dickson opposed abortion and advocated for municipal ordinances declaring abortion illegal, including an ordinance enacted by Waskom, Texas. Dickson and Right to Life East Texas made and reposted statements describing abortion as murder, abortion-related organizations as criminal organizations, and the Waskom ordinance as outlawing abortion. The Afiya Center and Texas Equal Access Fund brought defamation

and conspiracy-to-defame claims, seeking actual and punitive damages, and appellants sought dismissal under the Texas Citizens Participation Act.

PROCEDURAL HISTORY

The appellees sued appellants for defamation and conspiracy to defame based on statements concerning abortion, abortion providers, and a Waskom ordinance declaring abortion illegal and identifying abortion-related organizations as criminal organizations. The trial court denied appellants' motion to dismiss under the Texas Citizens Participation Act. The court of appeals panel declined to grant the TCPA appeal sought by appellants, and the court denied appellants' request for en banc reconsideration. Justice Schenck dissented from that denial, arguing that the speech was protected opinion and rhetorical hyperbole and that the case should have been dismissed promptly.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would have reversed the trial court's denial of the TCPA motion to dismiss and remanded with instructions to award appropriate attorney's fees. The actual opinion records a dissent from the court's denial of appellants' request for en banc reconsideration.

CASES CITED

- *Roe v. Wade*, 410 U.S. 113, 152, 159, 165-66 (1973)
- *Greenbelt Cooperative Publishing Ass'n, Inc. v. Bresler*, 398 U.S. 6, 13-14 (1970)
- *Dickson v. Lilith Fund for Reproductive Equity*, No. 07-21-00005-CV, 2021 WL 3930728 (Tex. App.—Amarillo Sept. 2, 2021, no pet. h.) (mem. op.)
- *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 795 (Tex. 2019)
- *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App.—Dallas 2015, pet. denied)
- *Carr v. Brasher*, 776 S.W.2d 567, 570 (Tex. 1989)
- *Baumgart v. Archer*, 581 S.W.3d 819, 825 (Tex. App.—Houston [1st Dist.] 2019, pet. denied)
- *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201 (Fla. 2010)
- *Calder v. Jones*, 465 U.S. 783, 791 (1984)
- *City of Fort Worth v. Rylie*, 602 S.W.3d 459 (Tex. 2020)
- *Griswold v. Connecticut*, 381 U.S. 479 (1965)
- *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 1002 (1992) (Scalia, J., dissenting)
- *Benton v. State*, 94 S.W.3d 561, 580 (Tex. 2002)
- *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 760, 775 (1994)
- *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489 n.1 (1996)
- *Shelley v. Kraemer*, 334 U.S. 1, 15 (1948)

- Florida Star v. B.J.F., 491 U.S. 524, 541 (1989)
- Braun v. Soldier of Fortune Magazine, Inc., 968 F.2d 1110 (11th Cir. 1992)
- New York Times Co. v. Sullivan, 376 U.S. 254, 269, 283-85 (1964)
- Boos v. Barry, 485 U.S. 312, 322 (1988)
- Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990)
- Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 499 (1984)
- Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 421 (1978)
- Family Planning Specialists v. Powers, 46 Cal. Rptr. 2d 667 (Cal. Ct. App. 1995)
- National Rifle Association v. Dayton Newspapers, Inc., 555 F. Supp. 1299 (S.D. Ohio 1983)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/texas-court-of-appeals-of-texas-fifth-district-at-dallas/2021/mark-lee-dickson-and-right-to-life-east-texas-v-the-afiya-e7u7dju0>