

SUPREME COURT OF WASHINGTON

American Legion Post No. 149 v. Department of Health

164 Wash. 2d 570 (2008) · Decided September 11, 2008

SUMMARY

The Washington Supreme Court held that Washington's Smoking in Public Places Act prohibits smoking in an American Legion post because the facility qualifies as a place of employment, even though it is a private facility. The court also upheld the smoking prohibition as applied to the post against challenges under the Washington Constitution, the United States Constitution, and related constitutional doctrines. The court affirmed the trial court's grant of summary judgment to the Department of Health and Kitsap County Health District.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Fairhurst, J.; Alexander, C.J.; Madsen, J.; Owens, J.; Sanders, J.; Johnson, J.; Chambers, J.; Bridge, J. Pro Tem.
JURISDICTION	Washington
DECIDED	September 11, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct review of a superior court order granting the respondents' motions for summary judgment and dismissing the Post's action with prejudice.
STANDARD OF REVIEW	Summary judgment rulings and issues of statutory interpretation are reviewed de novo. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	American Legion Post No. 149 v. Department of Health, Kitsap County Health District

TOPICS

- statutory interpretation
- administrative procedure act
- constitutional law
- substantive due process
- equal protection

PRACTICE AREAS

administrative law

constitutional law

health law

statutory interpretation

QUESTIONS PRESENTED

1. Whether Washington's Smoking in Public Places Act prohibits smoking in a private facility that qualifies as a place of employment.
2. Whether the Post had standing to assert constitutional claims on behalf of its members.
3. Whether the Act violates article I, section 7 of the Washington Constitution.
4. Whether the Act violates article I, section 12 of the Washington Constitution.
5. Whether the Act violates the Equal Protection Clause of the Fourteenth Amendment.
6. Whether the Act is unconstitutionally vague under the Washington and United States Constitutions.
7. Whether any party is entitled to attorney fees and costs.

HOLDINGS

1. The Act prohibits smoking in a private facility when the facility qualifies as a place of employment. The private-facility exception limits the definition of a public place and does not exempt places of employment from the separate prohibition in RCW 70.160.030.
2. The Post lacked representational standing to challenge the Act on behalf of its members because smoking was not germane to the purposes of the American Legion or the local Post.
3. The Act does not violate article I, section 7 of the Washington Constitution or federal substantive due process because smoking is not a fundamental right or protected privacy interest and the smoking prohibition satisfies rational-basis review.
4. The Act does not violate article I, section 12 of the Washington Constitution because the ability to smoke inside a place of employment is not a fundamental right or privilege of state citizenship.
5. The Act does not violate equal protection because smokers and private facilities are not suspect classes, smoking is not a fundamental right, and the statutory distinctions are rationally related to protecting employees from secondhand smoke.
6. The Act is not unconstitutionally vague as applied to the Post because an ordinary person would understand that smoking is prohibited in an area controlled by an employer where employees are required to work.
7. The Department of Health and Kitsap County Health District, as prevailing parties, were entitled to costs, including statutory attorney fees; the Post was not entitled to fees under 42 U.S.C. § 1988.

KEY QUOTATIONS

“We hold smoking is prohibited in the Post under the Act because it is a “place of employment” and the prohibition, as applied to the Post, is constitutional.” (570)

“If a facility is a “public place,” smoking is prohibited. If a facility is a “place of employment,” regardless of whether it is a “public place,” smoking is prohibited.” (592)

“The Act clearly prohibits smoking in any “place of employment,” the Post is a “place of employment,” and none of the exceptions in question apply to places of employment.” (614-615)

FACTUAL BACKGROUND

American Legion Post No. 149 is a private nonprofit fraternal organization with approximately 591 members, and it operates a facility open only to members and guests. The Post employed seven people to operate the facility and allowed members and guests to smoke in a lounge where employees were required to work. The Kitsap County Health District determined that the Post was violating Washington's Smoking in Public Places Act by permitting indoor smoking and demanded compliance.

PROCEDURAL HISTORY

The Kitsap County Health District issued the Post a notice of violation and demanded compliance with Washington's smoking-in-public-places statute. The Post sought declaratory and injunctive relief under the Administrative Procedure Act and Uniform Declaratory Judgments Act. The Thurston County Superior Court granted summary judgment to the Department of Health and Kitsap County Health District, denied the Post's motion, and dismissed the complaint with prejudice; the Washington Supreme Court granted direct review.

DISPOSITION

affirmed

CASES CITED

- Udall v. T.D. Escrow Servs., Inc., 159 Wn.2d 903, 908, 154 P.3d 882 (2007)
- Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 203-06, 11 P.3d 762, 27 P.3d 608 (2000)
- State v. Thorne, 129 Wn.2d 736, 762-63, 921 P.2d 514 (1996)
- Brown v. State, 155 Wn.2d 254, 267-68, 119 P.3d 341 (2005)
- State v. Brown, 139 Wn.2d 20, 28, 983 P.2d 608 (1999)
- W. Petroleum Imps., Inc. v. Friedt, 127 Wn.2d 420, 424, 899 P.2d 792 (1995)
- McGowan v. State, 148 Wn.2d 278, 288, 60 P.3d 67 (2002)
- Cox v. Helenius, 103 Wn.2d 383, 387, 693 P.2d 683 (1985)
- Echo Bay Cmty. Ass'n v. Dep't of Natural Res., 139 Wn. App. 321, 327, 160 P.3d 1083 (2007), review denied, 163 Wn.2d 1016 (2008)
- Tunstall v. Bergeson, 141 Wn.2d 201, 210, 5 P.3d 691 (2000)
- State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp., 142 Wn.2d 328, 342, 12 P.3d 134 (2000)
- Employco Pers. Servs., Inc. v. City of Seattle, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991)
- Janovich v. Herron, 91 Wn.2d 767, 772, 592 P.2d 1096 (1979)

- Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 802-03, 808, 812-13, 83 P.3d 419 (2004)
- Save a Valuable Env't v. City of Bothell, 89 Wn.2d 862, 866, 576 P.2d 401 (1978)
- Grosjean v. American Press Co., 297 U.S. 233, 244 (1936)
- Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wn.2d 418, 424, 511 P.2d 1002 (1973)
- Hague v. Comm. for Indus. Org., 307 U.S. 496, 527 (1939)
- Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977)
- NYC C.L.A.S.H., Inc. v. City of New York, 315 F. Supp. 2d 461, 465, 469 (S.D.N.Y. 2004)
- Madison v. State, 161 Wn.2d 85, 93-94, 103, 163 P.3d 757 (2007)
- Andersen v. King County, 158 Wn.2d 1, 14-15, 18-25, 31-32, 44, 138 P.3d 963 (2006)
- State v. McKinney, 148 Wn.2d 20, 26-27, 60 P.3d 46 (2002)
- State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)
- Ford v. Bellingham-Whatcom County Dist. Bd. of Health, 16 Wn. App. 709, 712, 558 P.2d 821 (1977)
- Bowes v. City of Aberdeen, 58 Wash. 535, 541-42, 109 P. 369 (1910)
- Shepard v. City of Seattle, 59 Wash. 363, 375, 109 P. 1067 (1910)
- Austin v. Tennessee, 179 U.S. 343, 348-50 (1900)
- O'Hartigan v. Dep't of Pers., 118 Wn.2d 111, 117, 121-24, 821 P.2d 44 (1991)
- Whalen v. Roe, 429 U.S. 589, 599-600 (1977)
- Bedford v. Sugarman, 112 Wn.2d 500, 513, 517, 772 P.2d 486 (1989)
- Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977)
- Palko v. Connecticut, 302 U.S. 319, 325-26 (1937)
- Benton v. Maryland, 395 U.S. 784 (1969)
- City of Bremerton v. Widell, 146 Wn.2d 561, 575-77, 51 P.3d 733 (2002)
- Roberts v. U.S. Jaycees, 468 U.S. 609, 617-19, 621-22, 629 (1984)
- Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 546 (1987)
- City of Dallas v. Stanglin, 490 U.S. 19, 24 (1989)
- Batte-Holmgren v. Comm'r of Pub. Health, 281 Conn. 277, 295, 914 A.2d 996 (2007)
- Coal. for Equal Rights, Inc. v. Owens, 458 F. Supp. 2d 1251, 1263 (D. Colo. 2006), aff'd, 517 F.3d 1195 (10th Cir. 2008)
- Players, Inc. v. City of New York, 371 F. Supp. 2d 522, 542-47 (S.D.N.Y. 2005)
- Roark & Hardee LP v. City of Austin, 394 F. Supp. 2d 911, 916-18 (W.D. Tex. 2005)
- Fagan v. Axelrod, 146 Misc. 2d 286, 293-97, 550 N.Y.S.2d 552 (Sup. Ct. 1990)
- Manufactured Hous. Cmty. of Wash. v. State, 142 Wn.2d 347, 355, 13 P.3d 183 (2000)
- Conger v. Pierce County, 116 Wash. 27, 36, 198 P. 377 (1921)
- State v. Reece, 110 Wn.2d 766, 770, 757 P.2d 947 (1988)
- State v. Vance, 29 Wash. 435, 458, 70 P. 34 (1902)
- State v. W.W. Robinson Co., 84 Wash. 246, 249-50, 146 P. 628 (1915)

- *Ralph v. City of Wenatchee*, 34 Wn.2d 638, 641, 644, 209 P.2d 270 (1949)
- *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-40 (1985)
- *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 448, 853 P.2d 424 (1993)
- *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)
- *R.R. Express Agency, Inc. v. New York*, 336 U.S. 106, 110 (1949)
- *City of Tucson v. Grezaffi*, 200 Ariz. 130, 136-37, 23 P.3d 675 (Ct. App. 2001)
- *Taverns for Tots, Inc. v. City of Toledo*, 341 F. Supp. 2d 844, 849-53 (N.D. Ohio 2004)
- *City of Spokane v. Douglass*, 115 Wn.2d 171, 179-83, 795 P.2d 693 (1990)
- *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n.7, 498-99 (1982)
- *Lexington Fayette County Food & Beverage Ass'n v. Lexington-Fayette Urban County Gov't*, 131 S.W.3d 745, 756 (Ky. 2004)
- *Winters v. New York*, 333 U.S. 507, 515 (1948)
- *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 640-41, 71 P.3d 644 (2003)
- *Holzman v. City of Spokane*, 91 Wash. 418, 426, 157 P. 1086 (1916)
- *State v. Lawson*, 40 Wash. 455, 457-58, 82 P. 750 (1905)