Sports Association, Inc., is a "nonprofit corporation promoting issues relating to sports,"[9] and Champion Painting, Inc. is a "small, family-owned painting and drywall business."[10] All three corporations sought to make independent expenditures in candidate elections, a category of speech that is prohibited by the MCPA.

These diverse corporate plaintiffs argued that the MCPA presents precisely the sort of corporate independent expenditure ban invalidated by the United States Supreme Court in *Citizens United*.[11] Montana Attorney General Steve Bullock and the Commissioner of Political Practices, on the other hand, argued that the statute was distinguishable from the federal ban at issue in *Citizens United*.[12] The most important distinction, Montana argued, was that *Citizens United* interpreted a federal statute that applied to federal elections, not a Montana statute governing Montana elections.[13] Therefore, they contended, while the *Citizens United* Court might have found a dearth of evidence linking independent corporate expenditures and corruption in federal elections, Montana had an extensive history demonstrating a causal connection between campaign expenditures and wide-sweeping corruption prior to the MCPA's enactment in 1912.[14]

In October 2010, District Court Judge Jeffery Sherlock of Lewis and Clark County granted the plaintiff corporations' joint motion for summary judgment.[15] Observing that "the Copper Kings are a long time gone to their tombs," Judge Sherlock ruled that Montana's ban on corporate expenditures fell under the umbrella of *Citizens United,* failed to pass strict scrutiny, and violated both the federal and Montana constitutions.[16]

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Georgia Supreme Court Strikes Down Ban on Assisted Suicide Advertisements

by Jack Park

In *Final Exit Network, Inc. v. Georgia*,[1] the Georgia Supreme Court unanimously[2] concluded that Georgia's statutory prohibition on advertising or offering to assist in the commission of a suicide was an unconstitutional restriction on free speech protected by both the United States and Georgia Constitutions. The court suggested that the state could have prohibited all assisted suicides instead of just public offers of assistance, leaving a potential opening for the State Legislature to pass a different law.[3]

In 1994, prompted by the activities of Dr. Jack Kevorkian in Michigan, the Georgia Legislature enacted a statute which provides that any person who "publicly advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony."[4] The statute does not affect laws that "may be applicable to the withholding or withdrawal of medical or health care treatment," or laws related to "a living will, a durable power of attorney for health care, an advance directive for medical care, or a written order not to resuscitate."[5]

Issues relating to natural death and the practice of assisted suicide have been the subject of many court decisions both before and after the Georgia Legislature acted in 1994. In 1990, for example, the United States Supreme Court held that the Due Process Clause of the Fifth and Fourteenth Amendments protects the right to refuse unwanted lifesaving medical treatment.[6] The Michigan Supreme Court rejected challenges to the constitutionality of the Michigan assisted suicide law in 1994, opening the door to the prosecution of Dr. Kevorkian for assisting in three suicides.[7] In 1997, the United States Supreme Court held that a Washington state statute that prohibited "caus[ing]" or "aid[ing]" in the commission of a suicide did not violate the Due Process Clause.[8] Then, in 2006, the Court held that an interpretive rule promulgated by the Attorney General of the United States that made it a violation of the Controlled Substances Act for a physician to assist in a suicide by dispensing or prescribing drugs was not entitled to administrative law deference and, therefore, could not override the Oregon Death with Dignity Act.[9]

The Georgia case arose after the 2008 suicide of a fifty-eight-year-old Georgian named John Celmer. According to the indictment, the Final Exit Network is a Georgia corporation that offers "exit guide" services through an internet site and by mail. Celmer, who had cancer but was in remission, contacted the Network by telephone and sent them certain parts of his medical records and a written statement expressing his wish to die. After a review of his case, the Network agreed to assist him. Celmer bought an "exit hood" and, after meeting with one of the defendants, ordered two helium tanks. At the meeting the discussion included "security concerns

relating to potential interference from Mr. Celmer's wife with the suicide."

On June 19, 2008, two of the defendants went to Celmer's house, where the "exit hood" was connected to one of the helium tanks and the tank turned on. The defendants "held [Celmer's] hands while he inhaled helium through the hood." After Celmer died, the defendants left, taking the hood, the helium tanks, and Network documents. One of the defendants "disposed of the tanks and hood in a dumpster."

A grand jury sitting in Forsyth County indicted four members of the Final Exit Network on charges of assisting in Celmer's suicide, racketeering, and tampering with evidence. The defendants moved to dismiss the indictment, arguing that it violated their right to equal protection under the Fourteenth Amendment to the United States Constitution and the parallel provision of the 1983 Georgia Constitution. They also contended that the law was unconstitutionally vague.

The trial court denied motions to dismiss, rejecting the contention that the law regulated speech and, instead, finding that the law criminalized some combinations of speech and conduct. The trial court further concluded that the law served a compelling public purpose and that it was narrowly tailored.

The trial court then granted a certificate of immediate review. The Georgia Supreme Court allowed the interlocutory appeal.

In a unanimous decision[10] written by Associate Justice Hugh Thompson, the court sustained a facial challenge to the assisted suicide statute, finding that it violated the free speech provisions of both the U.S. and Georgia Constitutions.[11] The court concluded that because the statute prohibited advertisements and public offers to assist in suicide, but not all assisted suicides, it created a content-based restriction on speech. As such, the statute was subject to strict scrutiny, requiring the state to show that the statute serves a compelling interest and is narrowly drawn.

Acknowledging the state's argument that its interest in preserving life is a compelling interest, the court nonetheless concluded that the statute was not narrowly tailored. In the court's view the statute was "wildly underinclusive."[12] It did not prohibit all suicides or nonpublic advertisements or offers of assistance. "Many assisted suicides are either not prohibited or are expressly exempted from the ambit of § 16-5-5(b)'s criminal sanctions."[13] Targeting actors like Dr. Kevorkian, as the state tried to do, left others "free" to make such nonpublic offers.[14]

The court rejected the contention that the requirement for an overt act provided the necessary narrow tailoring. It explained that the state could have "imposed a ban on all assisted suicides with no restriction on protected speech whatsoever," or it could have "sought to prohibit

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California Supreme Court Upholds Law Dissolving Redevelopment Agencies

by Angela Kopolovich

In *California Redevelopment Assn. v. Matosantos*[1] the California Supreme Court upheld a law dissolving the state's redevelopment agencies, while simultaneously striking down the agencies' last vestige of hope, a pay-to-play companion bill. The court's December 2011 decision thereby eliminated the state's redevelopment agencies entirely.[2]

By way of background, over the last several decades California's property tax revenue allocation system has been subject to a tug of war between local interests and the state's obligation to achieve equality in school funding. As a result of multiple constitutional amendments and judicial decisions, and through a rather complex system of transfers, the state essentially collects all property tax revenue and then redistributes that revenue back to the schools and other local governments.[3] Enter redevelopment agencies. Created after World War II and tasked with remediating urban decay, the agencies, in and of themselves, do not have the power to levy taxes. However, they are a powerful tool used (and sometimes abused[4]) by local governments to fund economic development (arguably, at the expense of other governmental agencies). Redevelopment agencies operate on a tax increment financing basis.

> *Under this method, those public entities entitled to receive property tax revenue in a redevelopment project area (the cities, counties, special districts, and school districts containing territory in the area) are allocated a portion based on the assessed value of the property prior to the effective date of the redevelopment plan. Any tax revenue in excess of that amount—the tax increment created by the increased value of project area property—goes to the redevelopment agency for repayment of debt incurred to finance the project.*[5]

Spending Ban, Helena Indep. Rec. (Sept. 30, 2010).

13 *Id.*; *see also* W. Tradition P'ship, Inc. v. Attorney Gen., No. BVD-2010-238, 2010 WL 4257195 (Mont. D. Ct. Oct. 18, 2010).

14 *Id.*; *see also* W. Tradition P'ship, Inc. v. Attorney Gen., No. BVD-2010-238, 2010 WL 4257195 (Mont. D. Ct. Oct. 18, 2010).

15 *See* W. Tradition P'ship, Inc. v. Attorney Gen., No. BVD-2010-238, 2010 WL 4257195 (Mont. D. Ct. Oct. 18, 2010).

16 *Id.*; *see also* Jess Bravin, *Judge Strikes down Montana's Ban on Corporate Political Expenditures*, Wall St. J. (Oct. 18, 2010).

17 *See* Charles S. Johnson, *High Court to Decide Fate of State Ban on Corporate Donations*, Helena Indep. Rec. (Sept. 18, 2011).

18 *See* W. Tradition P'ship, Inc. v. Attorney Gen., No. DA 11-0081, 2011 WL 6888567, at *1 (Mont. Dec. 30, 2011).

19 *Id.* at *3.

20 *Id.* at *7.

21 *Id.* at *7-11.

22 *Id.* at *12-15.

23 *Id.* at *14.

24 *Id.* at *15.

25 *Id.* at *3-4.

26 *Id.* at *15.

27 *Id.* at *21.

28 *Id.* at *20.

29 *Id.* at *37.

30 *Id.* at *41.

31 Justice Kennedy is the Circuit Justice for the Ninth Circuit.

32 *See* Brief for Petitioners, Am. Tradition P'ship, Inc. v. Bullock, No. 11-A762 (Feb. 9, 2012).

33 *Id.* at 27-36.

34 *See* Brief for Respondents, Am. Tradition P'ship, Inc. v. Bullock, No. 11-A762 (Feb. 15, 2012).

35 *Id.* at 4-6.

36 *Id.* at 7-15.

37 *See* Charles S. Johnson, *US Supreme Court Blocks MT's Ban on Corporate Election Spending*, Helena Indep. Rec. (Feb. 18, 2012).

38 *See* Am. Tradition P'ship, Inc. v. Bullock, No. 11-A762 (Feb. 17, 2012) (order granting application for stay).

39 *Id.*

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all offers to assist in suicide when accompanied by an overt act to accomplish that goal."[15] However, without an "explanation or evidence as to why a public advertisement or offer to assist in an otherwise legal activity is sufficiently problematic," the necessary narrow tailoring was lacking.[16]

In the aftermath of the court's ruling, the consensus was that new legislation was needed. The Forsyth County District Attorney announced that she would dismiss the entire case.[17] In response, the Georgia General Assembly passed a stronger bill (H.B. 1114), which Governor Deal has signed.

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Endnotes

1 2012 WL 360523 (Ga. Feb. 6, 2012).

2 Judge Christopher Brasher from the Fulton County Superior Court participated in place of Associate Justice David Nahmias, who was disqualified.

3 The court did say that, in light of its holding, it would not consider the "other constitutional challenges" made by the appellants. 2012 WL 360523 at * 3. The court did not identify those other challenges.

4 OCGA § 16-5-5(b).

5 OCGA § 16-5-5(d).

6 Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261(1990).

7 Michigan v. Kevorkian, 527 N.W. 2d 714 (Mich. 1994).

8 Washington v. Glucksberg, 521 U.S. 702 (1997).

9 Gonzales v. Oregon, 546 U.S. 243 (2006).

10 *See supra* note 2.

11 Apart from quoting the free speech provision of the Georgia Constitution, 2012 WL 360523 at * 3 n.2, the court largely invoked decisions of the U.S. Supreme Court and cited parallel decisions of its own.

12 2102 WL 360523 at *2 (quoting Brown v. Entm't Merchs. Ass'n USA, 131 S. Ct. 2729, 2740 (2011)).

13 2012 WL 360523 at *2.

14 *Id.*

15 *Id.*

16 *Id.*

17 *See Law on Assisted Suicide Rejected*, Atlanta Journal-Constitution, Feb. 7, 2012, A1, at A9.

California Supreme Court Upholds Law Dissolving Redevelopment Agencies

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for the dissolution of redevelopment agencies entirely, and outlined winding up procedures for pending projects and outstanding debts; while AB27 provided agencies with an "opt-in" or "pay-to-play" option—the agencies could continue to operate if the sponsoring cities or counties agree to make payments into funds benefiting the state's schools and special districts.

The California Redevelopment Association, the League of California Cities, and other affected parties brought a constitutional challenge directly to the California Supreme Court. In reviewing this case, the court considered two issues: (1) "[whether under the state constitution] redevelopment agencies, once created and engaged in redevelopment plans, have a protected right to exist that immunizes them from statutory dissolution[;]" and (2) whether under the state constitution "redevelopment agencies and their sponsoring communities have a protected right not to make payments to various funds benefiting schools and special districts as a condition of continued operation."[13] The court answered the first question no and the second question yes, effectively upholding AB26 (and its elimination of California's redevelopment agencies) as a proper exercise of legislative power and striking down AB27 as unconstitutional, thereby eliminating the agencies' opt-in alternative.[14]

The court reasoned that dissolution of the redevelopment agencies "is a proper exercise of the legislative power vested in the Legislature by the state Constitution. That power includes the authority to create entities, such as redevelopment agencies, to carry out the state's ends, and the corollary power to dissolve those same entities when the Legislature deems it necessary and proper."[15] The court rejected the argument that the state constitutional amendment authorizing allocation of property taxes to redevelopment agencies created an implied right for those agencies to exist, or somehow impaired the Legislature's power to dissolve those agencies.[16] Quoting prior case law, the court reasoned that "[i]n our federal system the states are sovereign but cities and counties [along with redevelopment agencies, which are political subdivisions thereof] are not; in California as elsewhere they are mere creatures of the state and exist only at the state's sufferance."[17] Thus the court rejected the petitioners' argument and held that AB26 is not unconstitutional and is properly within the Legislature's plenary powers.

The court then turned its attention to AB27, which was meant to provide redevelopment agencies an opt-in alternative—an exoneration, as it were. If an agency, or its sponsoring municipality, were to pay into a fund benefiting the schools and special districts (in theory easing the state's financial burden), the agency would have the option to continue to operate uninterrupted and conduct new business.[18] The petitioners argued that this provision is unconstitutional because it squarely conflicts with Proposition 22, which bars the state from requiring direct or indirect payments from the agencies for its benefit.[19] The court agreed.[20] Relying on drafters' and voters' intent, the Court reasoned that despite respondent's characterization of the payment as voluntary, the bill is facially invalid.[21] Thus the court struck down AB27 as unconstitutional.

The Chief Justice concurred that AB26 is not unconstitutional, but dissented in that he would have upheld AB27, as he didn't see it in conflict with Proposition 22.[22] Conceding that they aren't perfect, the Chief Justice noted that the Public Market Building in Sacramento, the Bunker Hill Project in Downtown Los Angeles, Horton Plaza and the GasLamp Quarter in San Diego, the HP Pavilion in San Jose, and Yerba Buena Gardens in San Francisco are all successful redevelopment agency projects which "create jobs, encourage private investment, build local business, reduce crime and improve a community's public works and infrastructure."[23]

On the other hand, others have applauded the outcome,[24] as it not only alleviates the state's budgetary problems[25] but "also has the beneficial side effect of curtailing eminent domain abuse."[26] For nearly a decade, following the U.S. Supreme Court's decision in *Kelo v. New London*, redevelopment agencies have been the target of intense scrutiny and at times political beatings. The *Kelo* decision prompted a domino effect of state legislative enactments drastically reducing eminent domain powers for redevelopment.[27] This case can be seen as an unintended (or perhaps intended) extension