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Summary of Attorney General v. Gypsum Resources, LLC, 129 Nev. Adv. Op. 4

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CONSTITUTIONAL LAW

Summary

The Court answered four questions certified to it by the United States Court of Appeals for the Ninth Circuit regarding the constitutionality of Nevada Senate Bill No. 358, 72d Leg. (Nev. 2003) (SB) which prohibited Clark County from rezoning land adjacent to the Red Rock Canyon National Conservation Area.

Disposition/Outcome

A law that operates over a particular locality instead of over the whole territory of the state, and which governs multiple items or projects and has a permanent rather than temporary effect in the administration of county government is considered a local law that unconstitutionally regulates county business. Further, a law that establishes a system of county government wherein the powers, duties, and obligations placed upon a political organization, such as zoning and planning, are not uniform throughout the State is unconstitutional. Finally, while the Court has recognized two exceptions to the invalidity of such local legislation, an emergency exception is only recognized if the legislation does not fall within an enumerated category of Article 4, Section 20 of the Nevada Constitution, such as the regulation of county business; and, a natural resource exception may only apply if the legislation's effects on certain counties are part of a broader interstate agreement.

Factual and Procedural History

In 1990, the U.S. Congress established the Red Rock National Conservation area (Red Rock) to preserve the area containing and surrounding the Red Rock Canyon. In 2003, respondent purchased land adjacent to Red Rock, zoned as rural area, with the intention of obtaining a zoning variance from Clark County in order to undertake a large-scale residential development project. The Nevada legislature thereafter passed Senate Bill No. 358 to remove Clark County's zoning power over the lands adjacent to Red Rock as part of a plan by the sponsoring legislator and the Clark County Commission to prevent the possibility of any future development in those lands. Respondent filed suit against appellant in federal district court, asking the court to enjoin the State of Nevada from enforcing S.B. 358. Respondent claimed that S.B. 358 violated portions of the Nevada and U.S. Constitutions. The federal district court granted summary judgment in favor of respondent on its Nevada constitutional claims and denied the Attorney General's summary judgment motion on respondent's federal equal

¹ By Oscar Peralta.

protection claim. Respondent then voluntarily dismissed its equal protection claim, leaving only the Nevada constitutional claims. The Attorney General appealed the district court's summary judgment order to the Ninth Circuit. Finding no clear precedent, the Ninth Circuit certified the present questions to the Nevada Supreme Court.

The certified questions were: “(1) Does S.B. 358 violate Article 4, Section 2 of the Nevada Constitution because it is a “local or special law” that ‘regulat[es] county...business’?; (2) Does S.B. 358 violate Article 4, Section 21 of the Nevada Constitution because a general law could have been made ‘applicable’?; (3) Does S.B. 358 violate Article 4, Section 25 of the Nevada Constitution by establishing a ‘system of County...Government’ that is not ‘uniform throughout the State’?; and (4) If S.B. would otherwise violate Article 4, Sections 20, 21, or 25 of the Nevada Constitution, does it fall within an applicable exception and so remain valid?”

Discussion

Justice Parraguirre wrote the unanimous opinion of the Court sitting en banc.²

Article 4, Section 20 of the Nevada Constitution prohibits the Legislature from passing local or special laws that regulate county business.³ “A law is local if it operates over 'a particular locality instead of over the whole territory of the State.'”⁴ A law that benefits the entire State may nevertheless be local if it “burden[s] only . . . certain residents and businesses within a particular locality.”⁵ Thus, any statewide benefit that might arise from preserving the lands adjacent to Red Rock does not change the fact that S.B. 358 operates over only one particular portion of Nevada, specifically small portions of Clark County. Therefore, S.B. 358 is a local law.

The Court next turned to whether S.B. 358 regulates county business. County business “cover[s] almost everything that concerns the administration of the county government.”⁶ The Court concluded that zoning constitutes county business. The Court noted a distinction between laws that regulate county business and laws that merely affect it. Laws that have an isolated and temporary effect on the county’s business are permissible.⁷ However, laws that are broad and ongoing, that substantially alter the power structure of the county, and that do not relate to a single item of project of county business are deemed regulatory.⁸ Whether a law regulates or affects county business, therefore, hinges on two criteria: (1) whether the challenged law governs a single item or project rather than multiple items or projects, and (2) whether the law's effect is temporary rather than permanent. S.B. 358 does not relate to a specific item or project. Rather, S.B. 358 has the amorphous goal of keeping urban sprawl away from Red Rock. Moreover, S.B.

² Chief Justice Pickering voluntarily recused herself from participation in the decision of this matter.

³ Nev. Const. art. IV, § 20.

⁴ *Clean Water Coal. v. The M Resort*, 127 Nev. ___, 255 P.3d 247, 255 (2011) (quoting *Damus v. County of Clark*, 93 Nev. 512, 516, 569 P.2d 933, 935 (1977)).

⁵ *Id.* at ___, 255 P.3d at 255.

⁶ *McDonald v. Beemer*, 67 Nev. 419, 425, 220 P.2d 217, 220 (1950) (quoting *Singleton v. Eureka County*, 22 Nev. 91, 101, 35 P. 833, 836 (1894) (Bigelow, J., concurring)).

⁷ *Cable v. Beemer* 64 Nev. 77, 177 P.2d 677 (1947).

⁸ *Pahrump v. Nye Cnty.*, 105 Nev. 227, 773 P.2d 1224 (1989).

358 permanently bans Clark County from ever rezoning the lands adjacent to Red Rock. Thus, S.B. 358 does regulate county business.

Article 4, Section 21 of the Nevada Constitution states that "[i]n all cases enumerated in [Section 20], all laws shall be general and of uniform operation throughout the State."⁹ The Court has ruled, therefore, that a law that is local, such as S.B. 358, may be upheld if "(1) it does not come within any of the cases enumerated in Nevada Constitution Article 4, Section 20; and (2) a general law could not have been made applicable."¹⁰ S.B. 358 falls within one of Section 20's enumerated cases in that it regulates county business. Thus, by failing to satisfy the first of these elements, the law is unconstitutional, and so the Court found it unnecessary to consider whether a general law could have been made applicable.

Article 4, Section 25 of the Nevada Constitution provides that "[t]he Legislature shall establish a system of County and Township Government which shall be uniform throughout the State."¹¹ A system of government consists of "the powers, duties, and obligations placed upon [a] political organization."¹² "Since zoning and planning fall within the powers, duties and obligations placed upon [a] political organization, they are precisely the type of activities that [S]ection 25 was intended to regulate."¹³ S.B. 358 divests Clark County of its zoning authority "in a unique manner, one not utilized by other counties, [and thus] it destroys the uniformity of the system of government among the counties."¹⁴

Finding that S.B. 358 violates Article 4, Sections 20, 21, and 25 of the Nevada Constitution, the Court considered two exceptions advanced by the Attorney General that would render S.B. 358 valid despite otherwise violating the Nevada Constitution: (A) the emergency justification and (B) the natural resource justification. While the Court has validated local laws to address an emergency, the laws in all such cases have fallen outside the enumerated categories of Article 4, Section 20. The Court found S.B. 358 distinguishable from those cases as it falls within an enumerated category, namely, regulating county business, and declined to expand the emergency justification to cover such a case.

The natural resource justification derives from *State ex rel. List v. County of Douglas*,¹⁵ where the Court held that a compact between five counties in Nevada and California did not amount to local legislation, as it was regional in nature. The Court interpreted *List* as standing for the proposition that legislation is regional (and thus not local in violation of Article 4, Section 20) when it affects certain counties as part of a broader interstate agreement. Because S.B. 358 affects only one county in one state and does not require cooperation from another state to protect Red Rock, it is distinguishable.

⁹ Nev. Const. art. IV, § 21.

¹⁰ *Clean Water*, 127 Nev. at __, 255 P.3d at 255.

¹¹ Nev. Const. art. VI, § 25.

¹² *Pahrump*, 105 Nev. at 227, 773 P.2d at 1224.

¹³ *Id.* at 228, 773 P.2d at 1225 (citation omitted) (internal quotation marks omitted).

¹⁴ *Id.* at 228-29, 773 P.2d at 1225.

¹⁵ 90 Nev. 272, 524 P.2d 1271 (1974).

Conclusion

The Court answered the first three certified questions in the affirmative and the last certified question in the negative. S.B. 358 violates Article 4, Sections 20 and 21 of the Nevada Constitution because it is a local law that regulates county business. Moreover, the law violates Article 4, Section 25 because it establishes a system of county government that is not uniform throughout the state. Finally, S.B. 358 does not fall within any applicable exception to the Constitution.