International Municipal Lawyers Association
www.imla.org

IMLA NEWS
Issue 7 – April 03, 2014

Elections: County Cannot Invoke *Younger* to Avoid Federal Court Review of Indiana Anti-Slating Law Which Had Previously Been Found Unconstitutional

Mulholland v. Marion County Election Board, No. 13-3027 (7th Cir. Mar. 20, 2014)

The Seventh Circuit has held that *Younger* abstention principles cannot be applied where the challenged state law has already been found unconstitutional and the parallel state administrative proceeding is too insubstantial to be a criminal prosecution.
In May of 2012 Marion County, Indiana held a primary election. Zachary Mulholland was a long-shot winner: the district's incumbent had held the seat for all but two of the previous thirty-eight years and Mulholland did not have the support of the Democratic party, as his competitor did. The morning of the primary Mulholland and a group of volunteers handed out flyers that listed the names of all five democrats running for election, state- and nation-wide, under the title "Vote Democrat."

These flyers were illegal under Indiana's "anti-slating" law, which makes it a crime to distribute literature listing multiple candidates during a primary, unless all of those candidates consent to being included in the literature. Once the Marion County Election Board (Board) got wind of Mulholland's literature, it held a meeting, reviewed the flyer, unanimously agreed it violated the anti-slating law, and issued an order directing its special deputies to seize the literature.

(Not surprisingly, the anti-slating law had already been deemed unconstitutional in federal court as a violation of candidates' First Amendment rights. Perhaps more

interestingly, in a 2003 lawsuit a federal district court had issued a preliminary injunction preventing the enforcement of the law by the Board. In that 2003 case, the district judge held the law was not narrowly-tailored to the state's interest in preventing campaign fraud, and that the state's supposed interest in protecting political candidates who did not want to be associated with others on literature listing them was not compelling enough to justify the suppression of speech. The final judgment stated that the law was "facially unconstitutional" and prohibited the Board from enforcing it against the plaintiffs, who at that time did not include Mr. Mulholland).

Despite this earlier ruling, the Board enforced the law against Mulholland. Mulholland responded by suing the Board, first in state court. The Board, after some months without any progress in the state case, issued an order scheduling a meeting to "hear from all interested parties" – essentially an administrative proceeding. It then moved for a stay in state court, arguing the hearing would provide a necessary factual record. Mulholland then filed suit in federal court, initiating a parallel proceeding on the issues. At this point the Board indefinitely postponed its hearing. The federal suit sought to enjoin the Board from enforcing the anti-slating law, like Mulholland's state suit, but also sought to enjoin the Board's pending meeting and challenged the validity of the subpoena Mulholland received for the meeting on the ground that it was based on an unconstitutional statute.

The Board responded by moving to dismiss based on the *Younger* doctrine, under which federal courts are to abstain from hearing cases when doing so would interfere with state administrative proceedings. The federal district court agreed with the Board and dismissed the case entirely. Mulholland appealed.

HELD: The Seventh Circuit reversed the District Court because 1) the Board's investigation was too preliminary to warrant *Younger* abstention, and 2) because, even if *Younger* applied, the previous federal ruling that the underlying law at issue was facially unconstitutional would amount to an extraordinary circumstance making *Younger* inapplicable.

DISCUSSION: As the Seventh Circuit noted, the Supreme Court recently clarified that the *Younger* doctrine is only applicable in three circumstances: "where federal jurisdiction would intrude into ongoing state criminal proceedings, or into certain civil enforcement proceedings (judicial or administrative) akin to criminal prosecutions, or into civil proceedings that implicate a State's interest in enforcing the orders and judgments of its courts." While the district court had held the Board's proceeding was similar enough to a criminal prosecution to warrant *Younger* abstention, the Seventh Circuit disagreed. It found there were "a few" features of the Board's investigation that seemed criminal, such as its initiation by a government body to look into a violation of state law and the Board's subpoena authority, but that these were not enough. The counterpoints the Circuit noted included that the Board had a limited ability to sanction, that it could only recommend a prosecution, and that in this case prosecution was especially speculative given that the Board had to recommend it to a separate, independent prosecutor at the state's Attorney General's office or the county. Moreover,

the proceedings were too preliminary to warrant federal deference given that there was no record of the purpose of the Board's pending, but indefinite, hearing. The Board countered that it was giving Mulholland the process he had requested on election day, but the Circuit Court found this cut against the Board's position because it indicated the purpose of the hearing was remedial – not coercive – meaning it was even further from a criminal proceeding than the Court initially proposed.

Completely independently, the Circuit found a second reason to deny *Younger* abstention: the Board was attempting to enforce a law already deemed, in a final judgment by a federal court, facially unconstitutional. This was important given that *Younger*, though itself an exception to the general rule that federal courts must hear cases and controversies within their jurisdictions, has exceptions of its own. The relevant exception here was that *Younger* does not apply when federal courts are enjoining enforcement actions involving "bad faith, harassment, or a patently invalid state statute." Here, the Board invoked *Younger* against the enforcement of a statute that was already deemed facially unconstitutional. The Board countered that *Younger* was appropriate because in 2003 the law was only deemed facially unconstitutional as to the plaintiffs in that case. This argument was rejected: as the court put it "[w]e have not encountered before the idea of facial unconstitutionality as applied only to a particular plaintiff. Facial unconstitutionality as to one means facial unconstitutionality as to all, regardless of the fact that the injunctive portion of the judgment directly adjudicated the dispute of only the parties before it."

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D03-20/C:13-3027:J:Hamilton:aut:T:fnOp:N:1311081:S:0 (last accessed Apr. 3, 2014).

Employment: Workers Wrongly Classified as "Fire Protection Employees" Win Liquidated Damages Under FLSA

Haro v. City of Los Angeles, Nos. 12-55062, 55310 (9th Cir. Mar. 18, 2014)

In the latest episode of an ongoing battle between Los Angeles and City employees engaged in activities incidental to firefighting, the Ninth Circuit has ordered the City to pay liquidated damages to workers who were improperly classified as "fire protection employees" and deprived of overtime pay.

In 1999 dual-trained paramedics (both firefighters and medics) and quality improvement analysts for the city of Los Angeles sued the City under the Fair Labor Standards Act (FLSA), claiming the City had improperly categorized them under the FLSA as "fire protection employees," thereby limiting their overtime pay. Being classified as such, instead of receiving time and half for every hour worked over 40 in one week, they had to work over 212 hours in a twenty-eight day period before receiving time and a half.