NAACP v. CITY OF PALO ALTO, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

United States District Court, Northern District of California, 2020.
Case No. 5:20-cv-07251-EJD.

The City of Palo Alto (the "City") describes the crown jewel of its parks system—the 1,400-acre Foothills Park (the "Park")—as a "nature lover's paradise." But the Park is a gated paradise that unconstitutionally excludes non-residents. The ban on non-residents traces its roots to an era when racial discrimination in and around the City was open and notorious. It is long past time to relegate this unlawful exclusion to the dustbin of history. Plaintiffs seek injunctive and declaratory relief to end the City's unconstitutional prohibition against entry by non-residents into the Park, and to prevent the City's wasteful and unlawful expenditure of public funds to enforce the prohibition. * * *

The Park is a place of green, rolling hills, irrigated grass fields, forested slopes, and spectacular views of the entire South Bay. It contains miles of hiking trails, picnic areas, a seasonal campground, and a man-made lake providing opportunities for boating and fishing. It is also a place where people are encouraged to gather for discussion, learning, and celebrations. Its interpretive center contains space that is regularly booked for meetings. The Oak Grove, an area for gatherings of up to 150 people, is proclaimed by the City to be "a wonderful place for events of all sorts, from weddings to graduation parties to reunions." * * *

But since 1969, it has been a crime, punishable by up to six months' imprisonment and a fine of up to $1,000, for non-residents to enter or remain in the Park. Palo Alto Municipal Code ("PAMC") § 22.04.150(a) (the "Ordinance") provides, in pertinent part:

Only residents of the city and regular or part-time city employees, members of their households related by blood, marriage, or adoption, and their accompanied guests are entitled to enter on foot or by bicycle or vehicle and remain in Foothills Park. . . . Upon the request of an authorized city employee or a member of the Palo Alto police department, a person seeking to enter Foothills Park at the main gate or a person within the boundaries of Foothills Park shall provide identification or information to satisfy the requirements of this subsection. . . . No person shall enter or remain in Foothills Park in violation of this subsection. Violations of this subsection shall be a misdemeanor.

Under PAMC § 1.08.010, a misdemeanor is punishable by imprisonment of up to six months, a fine of up to $1,000, or both.

Palo Alto Municipal Code ("PAMC") § 22.04.150(a) (the "Ordinance") provides, in pertinent part:

> Only residents of the city and regular or part-time city employees, members of their households related by blood, marriage, or adoption, and their accompanied guests are entitled to enter on foot or by bicycle or vehicle and remain in Foothills Park. . . . Upon the request of an authorized city employee or a member of the Palo Alto police department, a person seeking to enter Foothills Park at the main gate or a person within the boundaries of Foothills Park shall provide identification or information to satisfy the requirements of this subsection. . . . No person shall enter or remain in Foothills Park in violation of this subsection. Violations of this subsection shall be a misdemeanor.

Under PAMC § 1.08.010, a misdemeanor is punishable by imprisonment of up to six months, a fine of up to $1,000, or both. * * *

The City's ban on non-residents harkens back to a shameful era in its history. Well into the middle of the 20th century, lending institutions, government agencies, and private individuals combined to prevent Black Americans from residing or purchasing homes in the City. The history of housing discrimination in and around Palo Alto included, among other things: (1) a resolution passed by the Palo Alto Chamber of Commerce calling for the creation of a "segregated district for the Oriental and colored people of the city"; (2) the placement of racially restrictive covenants in deeds for the sale of homes in subdivisions throughout the City, which prevented African-Americans or other persons of color from owning such homes; (3) FHA and VA restrictions on insuring mortgages for homeowners in non-white neighborhoods (so-called "redlining"); and (4) "block busting," a systematic campaign by realtors and others that incited "white flight" out of neighboring communities, such as East Palo Alto, that did not have the same invidious real estate practices that excluded Blacks and other persons of color. * * *

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaration that Palo Alto Municipal Code § 22.04.150 violates the fundamental rights of persons who are not residents of Palo Alto to freedom of travel, freedom of speech, and freedom of assembly; that the Ordinance is therefore unlawful to the extent that it prevents non-residents of the City of Palo Alto from entering and remaining in Foothills Park; and that the Ordinance may not be enforced.

2. For a preliminary and permanent injunction ordering the City [to] immediately cease enforcing Palo Alto Municipal Code § 22.04.150, or any other provision of law that prohibits non-residents of Palo Alto from entering or remaining in Foothills Park or purports to punish such activity. * * *

LEYDON v. TOWN OF GREENWICH

Supreme Court of Connecticut, 2001.
257 Conn. 318, 777 A.2d 552.

PALMER, J. * * *

The plaintiff, Brenden P. Leydon, commenced this action against the named defendant, the town of Greenwich (town), seeking declaratory and injunctive relief to prohibit the enforcement of a town ordinance limiting access to Greenwich Point Park (Greenwich Point), a town park with a beachfront on the Long Island Sound, to residents of the town and their guests. * * * Greenwich Point is a town owned, 147 acre park facility that * * * contains a number of ponds, a marina, a parking lot, open fields, a nature preserve, shelters, walkways and trails, and picnic areas with picnic tables. There also is a library book drop located on the beach. The only land access to Greenwich Point is over a narrow, broccoli stem shaped piece of land known as Tod's Driftway (driftway), which is owned by * * * [defendant Lucas Point Association, Inc.], a private association of landowners who reside in the residential area adjacent to Greenwich Point. The town holds an easement over a private road on the driftway that provides the only means by which a person seeking to enter Greenwich Point by land may do so. * * *

On August 15, 1994, * * * the plaintiff, a resident of Stamford, attempted to enter Greenwich Point at its main gate. He was refused admission * * * . The plaintiff then filed this action for declaratory and injunctive relief against the town, claiming, inter alia, that the ordinance violates: (1) the first amendment to the United States constitution * * * .[13]

The scope of the government's power to limit speech or other first amendment activity on public property depends on the type of forum involved. * * * "In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed. . . . [Such locations include] streets and parks which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In these quintessential public forums, the government may . . . enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government

---

[13] There is nothing in the record to refute the plaintiff's wholly unremarkable assertion that, upon his admission to Greenwich Point, he intended to express himself by conversing with others "on topics of social and political importance." Indeed, the record fully supports the plaintiff's assertion. For example, the plaintiff testified, without contradiction, that, if permitted to enter Greenwich Point, he intended to use the park both for recreational activities *and* to discuss issues of importance to him and to the public, including the use of beach property by members of the general public. The plaintiff also testified that, on one occasion when he sought and was denied admission to Greenwich Point, he was to be interviewed, on the beach, by a reporter from the New York Times, regarding the issue of public access to parks.

interest, and leave open ample alternative channels of communication. Such close scrutiny is appropriate in these forums because such properties possess long-standing traditions of public usage." *State v. Linares,* 232 Conn. [345,] 366–67, 655 A.2d 737 [1995]. * * * "Because restrictions on speech in public forums receive the highest level of scrutiny and those in nonpublic forums are subject to the lowest . . . a court's initial categorization of property, as a practical matter, necessarily determines whether a particular restriction on speech will be invalidated." *State v. Linares, supra.*

Upon application of these principles, we conclude that Greenwich Point is a traditional public forum because it has the characteristics of a public park. * * * In view of the fact that Greenwich Point contains shelters, ponds, a marina, a parking lot, open fields, a nature preserve, walkways, trails, picnic areas with picnic tables, a library book drop and a beach, it is clear that Greenwich Point qualifies as a park for purposes of first amendment analysis. The fact that Greenwich Point has a boundary on the Long Island Sound that serves as a beach for swimming, sun bathing and other activities in no way alters its character as a park. As such, it is a traditional public forum. * * *

In the present case, the town has failed to explain why the ordinance's virtual ban on nonresidents is a reasonable time, place or manner restriction on the use of the park by such nonresidents. Moreover, even if we assume that the town has a compelling interest in restricting nonresident access to the park—an assumption that finds no support in the record—the ordinance is not narrowly tailored to accomplish that end. Consequently, the ordinance does not pass federal constitutional muster. It is apparent, moreover, that the ordinance violates the first amendment both as applied to the plaintiff and for substantial overbreadth. With respect to the former ground for finding the ordinance unconstitutional, the town lawfully cannot bar the plaintiff from Greenwich Point due solely to the fact that he is a nonresident because the park is a *public* forum. Furthermore, the ordinance bars a large class of nonresidents, namely, all nonresidents who cannot find a resident host, from engaging in a multitude of expressive and associational activities at Greenwich Point. Because the town's restriction on the use of Greenwich Point by nonresidents cannot be justified on the ground that it is narrowly tailored to meet a compelling need, the ordinance is facially overbroad. The ordinance, therefore, cannot withstand scrutiny under the first amendment, either as applied to the plaintiff or as applied to other nonresidents who might wish to enter Greenwich Point. * * *

In light of our conclusion that the town cannot restrict access to Greenwich Point on the basis of residency, we also must address: (1) the plaintiff's claim that any agreement between the town and the association to restrict access to Greenwich Point is unenforceable; (2) the association's

claim that the use of the easement over its property is restricted to town residents and their guests; and (3) the plaintiff's claim that he is entitled to injunctive relief against the association. We conclude that any agreement between the town and the association is unenforceable and, furthermore, that the plaintiff is entitled to a judgment against the association declaring as much. For the reasons that follow, we also reject the association's contention that, on the basis of its 1945 agreement with the town, the easement over its property may be used only by town residents and their guests. We conclude, however, that the plaintiff is not entitled to any other relief affecting the property rights of the association. * * *

The plaintiff asks us to affirm, inter alia, that part of the judgment of the Appellate Court directing the trial court to grant the plaintiff injunctive relief against the association. The plaintiff's sole basis for such a request, however, is his contention that the Appellate Court was correct in its reasoning that the public trust doctrine required that he be granted access to Greenwich Point over the association's driftway. * * * [T]he public trust doctrine does not extend that far. Furthermore, neither the federal constitution nor the state constitution governs private, as opposed to governmental, conduct in this realm. On this record, therefore, the plaintiff has presented no persuasive reason why the Appellate Court's reasoning vis-a-vis the association should be sustained.

It may be that, under applicable property law or other legal doctrines, the plaintiff and other nonresidents have a right to use the easement created over the driftway in 1892 to gain access to Greenwich Point, the dominant estate, from the property of the association, the servient estate. To the contrary, however, it may be that, if the easement were opened to all persons, it would become overburdened; or that other applicable property law or other legal doctrines would allow the association to limit the use of the easement, or that, failing such limitation, the easement would revert to the association and cease to exist. These issues were not fully explored or litigated at trial and certainly were not fully determined by the trial court. The resolution of these issues will have to await the outcome of what the parties do or do not do in the wake of this decision and will depend on what further remedies any of them may seek. Insofar as the plaintiff's claims against the association are concerned, the issue in this case is limited to whether the association has a right to enforcement of the ordinance's residency requirement. Consequently, the plaintiff is not entitled to a judgment that purports to settle the *property rights* of the association. * * *

5. THE ABILITY OF CITIES TO ANNEX OUTSIDERS

This subsection raises a critical issue about inter-city relationships both as a matter of history and a matter of theory: who needs to agree

before one city can annex another?[9] As between the annexing city and the city to be annexed, at least four answers seem possible:

1. Citizens of both the annexing and annexed city could vote, with all ballots counted together according to the principle of one person, one vote.

2. Only citizens of the annexing city could vote; no one in the annexed city would be entitled to vote.

3. Only citizens of the annexed city could vote; no one in the annexing city would be entitled to vote.

4. Citizens of both the annexing and annexed city could vote, but the ballots would be counted separately. Annexation would require both a majority of the vote of the annexing city and a majority of the vote of the annexed city.

All four of these answers have been upheld as constitutional. See Hunter v. Pittsburgh, supra (#1); Murphy v. Kansas City, Missouri, 347 F.Supp. 837 (W.D.Mo.1972) (#2); Moorman v. Wood, 504 F.Supp. 467 (E.D.Ky.1980) (#3); Town of Lockport v. Citizens for Community Action, infra (#4).

In many cases, annexation disputes pit communities of differing sizes against one another. What would justify giving a small city a veto on being annexed by a larger city (as in positions 3 and 4, above)? What would justify letting a large city annex a smaller city when a majority of the smaller city opposes the annexation (as in positions 1 and 2 above)?

Annexation disputes arise for myriad reasons and the particular facts of any such dispute may bear on the method one may choose for resolving it. The federal district court judge in *Moorman* nicely describes some of the forces that underlie annexation disputes:

> Although the plaintiffs here claim that the annexations are the result of the efforts of two "affluent subdivisions" to attempt to avoid their fair share of urban problems, this is not always, nor

---

[9] For a consideration of the legal issues raised by annexation, see, e.g., Christopher Tyson, Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism, 87 Tul. L. Rev. 297 (2012); Christopher Tyson, Annexation and the Mid-size Metropolis: New Insights in the Age of Mobile Capital, 73 U. Pitt. L. Rev. 505 (2012); Judith Wegner, North Carolina's Annexation Wars: Whys, Wherefores, and What Next, 91 N.C. L. Rev. 165 (2012); Amanda K. Baumle, Mark Fossett, Warren Waren, Strategic Annexation Under the Voting Rights Act: Racial Dimensions of Annexation Practices, 24 Harv. BlackLetter L. J. 81 (2008); Robert D. Zeinemann, Overlooked Linkages Between Municipal Incorporation and Annexation Laws: An In-Depth Look at Wisconsin's Experience, 39 Urb. Law. 257 (2007); Clayton Gillette, Voting With Your Hands: Direct Democracy in Annexation, 78 S. Cal. L. Rev. 835 (2005); Nicholas Cooper, Annexation in Iowa and the "Textbook Example" of a Voluntary Annexation that Hardly Seems Voluntary, 9 Drake J. Agric. L. 103 (2004); Clayton Gillette, Expropriation and Institutional Design in State and Local Government Law, 80 Va. L. Rev. 625 (1994); Laurie Reynolds, Rethinking Municipal Annexation Powers, 24 The Urban Lawyer 247 (1992). For a history of annexation, see, e.g., Jon Teaford, City and Suburb: The Political Fragmentation of Metropolitan America, 1850–1970, pp. 32–63 (1979); see also Sam Bass Warner, Jr., Streetcar Suburbs: The Process of Growth in Boston, 1870–1900 (1962).

even usually the case in local annexation controversies. The court has known citizens of an unincorporated area with no municipal services whatever and a blue collar population to resist annexation to an affluent city of 15,000 and, in another case, a ferocious court battle to be waged to resist annexation to a city with a population of 3,000 or less, where neither the annexors nor the annexees could be described as affluent.

Although, of course, there may be some desire to escape higher taxes and urban problems, in many instances, the motivation for resisting annexation in this vicinity is that many of the people like to live in their small towns where they can know the mayor, city council members and other officials personally, and where they can live their lives, as they see it, relatively free from regulation and have a direct voice in such municipal matters as zoning or the granting of a liquor license.

Where financial considerations are a primary motive in opposing annexations, frequently they involve a conscious desire to accept fewer municipal services as a trade off for lower taxes. For example, many of the smaller communities, both incorporated and unincorporated, keep taxes rather low by utilizing volunteer fire departments, part-time police forces, septic tanks instead of sewers, no city manager or engineer, etc. From this point of view, the prevention of annexation enables those with limited financial resources better to own their own homes. To such people terms like "metro government" and "annexation" are calls to a holy war of resistance.

The annexing cities, on the other hand, are often motivated by a desire to expand their tax base and a perceived need to end the confusion and inefficiency which they contend result from the profusion of small government entities. The court expresses no opinion as to the wisdom of either of these positions. They are described here solely to explain the emotionally charged dilemma with which the legislature was presented.

The three readings that follow—two federal Supreme Court cases and a book excerpt—provide some background for considering the possible ways one might go about deciding annexation issues. The first case, Hunter v. Pittsburgh, is best known for its strong dicta that the federal Constitution places few, if any, constraints on the power of states to create or destroy "their" local governments. We considered that aspect of the decision in Chapter Two; we return to the decision here because the case itself arose out of an annexation dispute between a large city and a smaller one. The Court's decision made it clear that the state had no federal constitutional obligation to treat the residents of the annexing community

and the residents of the community to be annexed as if they formed two separate communities. It therefore held that it was constitutional for the larger city to annex the smaller one over the objection of its residents. Indeed, according to the Court, the state could simply impose a new boundary without obtaining the consent of the residents of either the annexing or the annexed city. The next case, Town of Lockport v. Citizens for Community Action, is not strictly speaking a case about annexation. It nevertheless addresses a question related to the one that underlies *Hunter*. In the course of its reasoning, it concludes that the state may, if it chooses, refuse to allow a city's residents to annex a neighboring city without the consent of the voters of the neighboring city.

The book excerpt provides some perspective on how one might resolve the policy questions that federal constitutional law leaves open with respect to annexation disputes. David Rusk, a former mayor of Albuquerque, a city that enjoyed broad annexation authority, suggests that it is important to permit central cities to annex surrounding communities with relative ease. He argues that cities that can easily annex surrounding territory are elastic and therefore can "capture" suburban growth, while cities that cannot are "inelastic" and therefore "contribute to" suburban growth. Note that Rusk seems to assume that something called "suburban growth" is inevitable and that the sole question is whether central cities will be able to capture the benefits of this growth. Moreover, as the *Moorman* case suggests, annexation arises not just from a central city's desire for growth but from land disputes between smaller communities. Expanding urban annexation power may encourage smaller, unincorporated communities to seek incorporation, thereby triggering an annexation war over the dividing line between neighboring communities. If so, the annexation question must be considered together with the other state law rules that distribute power between local communities of varying sizes and wealth.

HUNTER V. PITTSBURGH

[See Chapter 2, Section A-1, supra.]

TOWN OF LOCKPORT V. CITIZENS FOR COMMUNITY ACTION

Supreme Court of the United States, 1977.
430 U.S. 259, 97 S.Ct. 1047, 51 L.Ed.2d 313.

MR. JUSTICE STEWART delivered the opinion of the Court. * * *

County government in New York has traditionally taken the form of a single-branch legislature, exercising general governmental powers. General governmental powers are also exercised by the county's constituent cities, villages, and towns. The allocation of powers among these subdivisions can be changed, and a new form of county government