

LEGAL AND REGULATORY NOTES

The Common Benefits Clause

In a March 2012 decision, the Vermont Supreme Court held that the Common Benefits Clause of the Vermont Constitution provides a self-executing private right of action, and that damages can be awarded to individual plaintiffs for violating the clause. *In re Town Highway No. 20, Town of Georgia (Petition of Rhodes), Rhodes v. Town of Georgia*, 2012 VT 17.

This protracted dispute – which originally began in 1995 and has resulted in multiple civil actions and two appeals to the Vermont Supreme Court – involved two town highways in the Town of Georgia. In January 2010, the Franklin Superior Court found that the selectboard discriminated against Rhodes and that the selectboard’s decisions with respect to discontinuance, reclassification, and maintenance of the highways were all guided by a singular motive to favor the property rights of Rhodes’s neighbors and were part of a consistent pattern of discriminatory conduct. The superior court ruled that the town had violated Rhodes’s constitutional rights under the Common Benefits Clause and awarded him \$830,000 in damages plus \$5,000 in attorneys’ fees. The court denied Rhodes’s request for punitive damages but ordered the town to approve his most recent application to improve one of the town highways within 30 days.

The town appealed the decision and Rhodes cross-appealed on the issue of the denial of punitive damages. On Rhodes’s cross-appeal for punitive damages, the court noted that punitive damages are not meant to reward an injured party, but to punish and deter the wrongdoer. In order to prevail on a claim of punitive damages, a plaintiff must show that the defendant’s wrongdoing was intentional and deliberate and has the character of outrage frequently associated with crime. Even if a town’s actions met this standard, however, absent a clear legislative directive to the contrary,

municipalities are immune from punitive damage awards. Since the underlying purposes of punitive damages – punishment of wrongdoers and deterrence of future conduct – cannot be met if punitive damages are awarded against a municipality for the acts of its officers – who would not pay the damages themselves – punitive damages could not be assessed against the town. According to the court, the proper vehicle for deterring municipal officials is a public election, not a punitive damage award.

With respect to the town’s appeal, the court held that the Common Benefits Clause provides a self-executing private right of action and that damages can be awarded to individual defendants for the violation of the clause. The Common Benefits Clause provides:

“That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.” (Chapter I, Article 7, Vermont Constitution)

According to the court, to prevail on claim for violation of the Common Benefits Clause, a plaintiff must show disparate and arbitrary treatment when compared to others similarly situated and that the treatment directly favors another individual or group. The plaintiff must demonstrate not only that the action was wholly irrational and arbitrary but also that it was actuated by personal motives unrelated to the defendant’s official duties. The basis of the

violation was the Georgia selectboard's repeated failure to provide fair and impartial decision-making which arose from a bias against Rhodes and favoritism toward his neighbors. The effect of this was to deny Rhodes reasonable access to his property for many years. According to the court, there was "no question that the [Georgia] selectboard invidiously discriminated against Rhodes in violation of due process and [the Common Benefits Clause]." The court also found that injunctive relief on the constitutional claim could not compensate Rhodes for any emotional or economic injury caused by the selectboard's actions. It was the corruption of the highway classification process over the span of more than a dozen years that caused Rhodes's harm, and an award of compensatory damages was required to vindicate this harm. The proper measure of Rhodes's damages was "the anguish and inconvenience resulting from years of efforts to gain reasonable access to the property frustrated by a biased selectboard, together with any additional costs for road improvements caused by the delay."

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2010-100.html>.

Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center