

FILED
LOS ANGELES SUPERIOR COURT

JUN 25 2008

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HAROLD P. STURGEON,

Plaintiff,

v.

WILLIAM J. BRATTON, *et al.*,

Defendants,

and

BREAK THE CYCLE, *et al.*,

Interveners.

Case No. BC 351646

RULING ON SUBMITTED MATTER

RULING ON SUBMITTED MATTER

INTRODUCTION

The case before the Court today is of significant interest to many diverse individuals and organizations. It was precisely for this reason that the Court permitted interested parties Break the Cycle, Los Jornaleros, El Comite de Jornaleros, Instituto de

1 Educacion Popular del Sur de California, to officially intervene in the case, so that the
2 *legal positions* of the widest possible cross-section of the community might be
3 presented.

4
5 The Court stresses *legal positions* intentionally. The Court is not unmindful of the
6 current intense political debate over issues of immigration. However, the Court's duty
7 and function as dictated by the Constitution of the United States, the Constitution of
8 the State of California and the Common Law, is to avoid considering the political
9 aspects of the case and focus only on the legal ones. That the Court's decision will
10 and should result in political discourse is beyond question but such consequence
11 cannot and does not detract from the Court's obligation to consider only the law in
12 making its decision.

13
14 It is also not the Court's function to consider the wisdom of the enactment of Special
15 Order 40. As the Supreme Court of California recently stated in *In re Marriage*
16 *Cases*, S.147999, filed May 15, 2008:

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18 "It is also important to understand at the outset that our task in this proceeding is not
19 to decide whether we believe, as a *matter of policy*, that the officially recognized
20 relationship of a same-sex couple should be designated a marriage rather than a
21 domestic partnership (or some other term), but instead only to determine whether the
22 difference in the official names of the relationships *violates the California*
23 *Constitution.*" *Ibid* pp 4-5

24
25 While judges of this country and state do not leave their personal opinions at the
26 courthouse door every morning, it is incumbent upon them not to let such opinions
27 color their view of the cases before them that day. The Supreme Court goes on:

28

1 "Whatever our views as individuals with regard to this question as a matter of policy,
2 we recognize as judges and as a court our responsibility to limit our consideration of
3 the question to a determination of the constitutional validity of the current legislative
4 provisions" *ibid* p 5

5
6 Thus, to expect this Court to be (or to so read into its decision) a social or moral
7 arbiter of disparate popular viewpoints on Special Order 40 would be to assign the
8 Court duties it is not trained, indeed under the federal and state constitutions and the
9 Common Law not empowered, to exercise. The judicial function applicable to the
10 instant case is rather a neutral exercise of legal interpretation, with due emphasis on
11 judicial restraint in its application.

12
13 The Court is not unmindful of the fact that a reader of this decision might be of the
14 opinion that the Court has "ignored the will of the people". However, the branches of
15 government in which such will are crucial are the legislative and executive ones, not
16 the judicial. The impartiality of the courts of justice of the United States and their
17 necessary independence to make politically unpopular, yet arguably legally correct
18 decisions has long been a hallmark of our democracy. Indeed, Alexander Hamilton
19 wrote in Federalist Paper 78: "For I agree there is no liberty, if the power of judging
20 be not separated from the legislative and executive powers."

21
22 The Constitution of the United States is the primary source for ascertaining the
23 enduring will of the people. Current will may change with the passage of time and/or
24 events, but the Constitution endures as the fundamental law of the land. Thus, when
25 current popular will as expressed in the initiative process, in legislation or executive
26 order is in conflict with the enduring will of the people as expressed in the
27 Constitution, it must give way to that enduring will.

28

1 **ANALYSIS**

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3 Defendants William J. Bratton, John Mack, Shelley Freeman, Alan J. Skorbin, Andrea
4 Ordin, Anthony Pacheco, all having been sued by Plaintiff Harold P. Sturgeon in their
5 official capacities, (hereinafter Defendants) and Intervenors Break the Cycle, Los
6 Jornaleros, El Comite de Jornaleros, Instituto de Educacion Popular del Sur de
7 California, (hereinafter Intervenors), bring before the Court their Motions for Summary
8 Judgment, and in Defendants' case, an alternative Motion for Summary Adjudication.
9 Plaintiff has filed opposition to these motions and all parties have well and diligently
10 briefed the pertinent issues for the Court's consideration.

11
12 Defendants and Intervenors bring their motions on the same grounds, to wit:

- 13
14 1. Plaintiff's attack on Special Order 40 is a facial, as opposed to an as applied,
15 challenge.
16 2. Plaintiff cannot show that Special Order 40 conflicts with federal or state law.

17 In his opposition, plaintiff also raises the issue of federal preemption of Special Order
18 40.

19
20 **Requests for Judicial Notice**

21 The parties have requested the Court take judicial notice of various documents. As
22 the Court considers none of them to be relevant to its discussion of the issues
23 presented in the motions and opposition thereto, the requests are denied.

24
25 **Evidentiary Objections**

26 Defendants filed evidentiary objections with their reply. During oral argument the
27 Court advised the parties the circumstances under which it would rule on the
28

1 objections. The parties did not take exception to the Court's intention. The
2 circumstances not having arisen, the Court does not rule on the objections.

3
4 **Merits**

5
6 Facial v. Applied Challenge

7
8 Plaintiff Sturgeon brings the current action for declaratory and injunctive relief under
9 CCP 526a, seeking as a taxpayer the Court declare "...that Special Order 40 and the
10 policies, procedures and practices arising thereunder as implemented by the Los
11 Angeles Police Department, are unlawful and void", and that the Court issue an
12 injunction to bar the expenditure of taxpayer funds to carry out Special Order 40.

13
14 In their Memoranda of Points and Authorities, the parties differ on whether Plaintiff's
15 challenge to Special Order 40 is facial or as applied. Moving parties contend it is
16 facial and Plaintiff contends it is both. There is, however, no dispute that the entire
17 order is challenged by Plaintiff. Further, during oral argument, Plaintiff conceded that
18 the as applied challenge related only to the order's application to him, not as it was
19 applied by Defendants internally or in the field. His position in this litigation, however,
20 is exclusively as a taxpayer. CCP 526a affords him standing. See Blair v. Pitchess
21 (1971) 5 Cal.3d 258, 267-268. He does not allege that he has had personal
22 experience with any defendant or members of the Los Angeles Police Department in
23 connection with Special Order 40.

24
25 Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069 is instructive here. In that case,
26 various plaintiffs, among which were taxpayers suing under CCP 526a sought to bar
27 an ordinance relating to the conduct of homeless persons in Santa Ana. Plaintiffs
28 argued that their challenge was facial and as applied. On appeal, the Court of

1 Appeal however, drew a distinction between the two. It noted that a facial challenge
2 "considers only the text of the measure itself, not its application to the particular
3 circumstances of an individual (citations)." Tobe, 1084. The Court found the
4 challenge to be facial since the relief requested was to enjoin enforcement of any
5 application of the ordinance to any person in any circumstance.

6
7 Tobe drew a further distinction between the two as it noted that an as applied
8 challenge must assume the validity of the statute or ordinance itself, with the attack
9 then focusing on misapplication of such statute or ordinance. Logic supports that
10 conclusion. If the statute or ordinance, or in this case, rule is invalid on its face, then
11 a *fortiori* any application of it is illegal. There is need to discuss specific application
12 errors only if the rule is considered valid on its face, but is allegedly being mis-
13 applied.

14
15 In the instant matter, it is clear that Plaintiff Sturgeon is challenging the validity of
16 Special Order 40 itself and does not concede its validity for purposes of testing its
17 application. Plaintiff seeks herein to prevent any application of the order since he
18 contends the order itself is in conflict with federal law, and thus subject to the
19 Supremacy Clause of the United States Constitution.

20
21 The Court finds the attack is facial.

22
23 Conflict with Federal Law

24 Special Order 40 states:

25
26 Officers shall not initiate police action where the objective is to discover the
27 alien status of a person. Officers shall neither arrest nor book persons for violation of
28 Title 8, Section 1325 of the United States Immigration Code (Illegal Entry)

1 Plaintiff contends that Special Order 40 is in conflict with Title 8, Section 1373 of the
2 United States Code and Title 8, section 1644 of said code, thus requiring the
3 invocation of the Supremacy Clause of the United States Constitution to invalidate
4 the order.

5
6 Section 1373 states:

- 7
8 (a) In general. Notwithstanding any other provision of Federal, State, or local
9 law, a Federal, State or local government entity or official may not prohibit,
10 or in any way restrict, any governmental entity or official from sending to, or
11 receiving from, the Immigration and Naturalization Service information
12 regarding the citizenship or immigration status, lawful or unlawful, of any
13 individual.
14 (b) Additional authority of government entities. Notwithstanding any other
15 provision of Federal, State, or local law, no person or agency may prohibit,
16 or in any way restrict, a Federal, State, or local government entity from
17 doing any of the following with respect to information regarding the
18 immigration status, lawful or unlawful, of any individual:
19 (1) Sending such information to, or requesting or receiving such
20 information from, the Immigration and Naturalization Service.
21 (2) Maintaining such information.
22 (3) Exchanging such information with any other Federal, State, or local
23 government entity.

24
25 Section 1644 states:

26 Notwithstanding any other provision of Federal, State, or local law, no State or
27 local government entity may be prohibited, or in any way restricted, from
28 sending to or receiving from the Immigration and Naturalization Service
information regarding the immigration status, lawful or unlawful, of an alien in
the United States.

In order for the Court to find Special Order 40 to conflict with USC 1373 and USC
1644, Plaintiff " must demonstrate that the (order's) provisions inevitably pose a

1 present total and fatal conflict with the applicable constitutional prohibitions'...(They
2 must) demonstrate 'that no set of circumstances exists under which the (order) would
3 be valid.' " Kaufman v. ACS Systems, Inc (2003) 110 Cal.App.4th 886. Thus, in the
4 instant case, the conflict must be total.

5
6 The prohibitions of the federal statutes are with respect to communication. According
7 to these statutes, the LAPD may not restrict a police officer from communication with
8 the Immigration and Naturalization Service (currently Immigration and Customs
9 Enforcement) regarding the immigration status of an individual. Special Order 40
10 neither mentions nor refers to such communication. It does not order that a police
11 officer, once s/he has made an otherwise lawful arrest may not send or receive
12 immigration information. Plaintiff concedes that the federal statutes do not compel the
13 initiation of police action only for the purpose of determining the immigration status of
14 an otherwise law abiding person, nor do they require the police officer to
15 communicate with the Immigration and Naturalization Service at all.

16
17 The Court finds the "total and fatal" conflict does not exist.

18
19 Federal preemption

20
21 All parties agree that this issue is governed by De Canas v. Bica (1976) 424 U.S.
22 351. In order to find that Special Order 40 is preempted by federal law, consideration
23 must be given the three tests the Supreme Court formulated in De Canas, to wit:

- 24
25 1. Is the (order) a regulation of immigration?
26 2. Does the nature of the regulated subject matter permit no other conclusion
27 than preemption, or has Congress unmistakably ordained preemption?
28 3. Does the (order) stand as an obstacle to the accomplishment and
execution of the full purposes and objectives of Congress?

1 The parties agree that the first De Canas test is inapplicable, but Plaintiff argues the
2 second and third require a finding of preemption in that the federal statutes
3 "constitute unmistakable federal mandates requiring the free flow of information
4 regarding persons' immigration status and because Special Order 40 and the
5 practices and procedures arising thereunder stand as obstacles to the
6 accomplishment and execution of the full purposes and objectives of Congress as
7 expressed in those statutes." Plaintiff's Memorandum of Points and Authorities in
8 Opposition to Intervenor's Motion for Summary Judgment, p.16, ll. 22-25.

9
10 The Court does not find that the second and third De Canas tests apply in the instant
11 matter. As to the second, had Congress wanted to unmistakably ordain preemption in
12 the area of arrest, it could have required that it exclusively would decide the
13 circumstances under which an arrest may or may not be made based solely on
14 immigration status. It has not.

15
16 As to the third De Canas test, the purposes are indeed full and open communication,
17 as posited by Plaintiff, but not a mandate that the police officer communicate. S/he
18 may or may not do so, but may not be restricted by his/her agency from
19 communication. Special Order 40 does not prohibit or restrict such communication.

20
21 Violation of California Law

22 Plaintiff contends that since Special Order 40 conflicts with federal law and since the
23 California Constitution expressly subordinates itself to federal law, the order violates
24 California law as well.

25
26 Inasmuch as the Court has found above that Special Order 40 does not conflict with
27 federal law, Plaintiff' argument on this issue fails.

1 There is further discussion about Penal Code section 834b. The Court finds the
 2 discusslon inapplicable to any issue in this case as the section was held to be
 3 preempted by federal law. League of United Latin American Citizens v. Wilson (1995
 4 C.D. Cal.) 908 F. Supp. 755.

5

6 **DISPOSITION**

7 On all issues before the Court, it finds for all defendants and intervenors and against
 8 Plaintiff. Both Motions for Summary Judgment are **Granted**. Defendants are ordered
 9 to prepare the Judgment. The trial and final status conference dates are hereby
 10 ordered vacated.

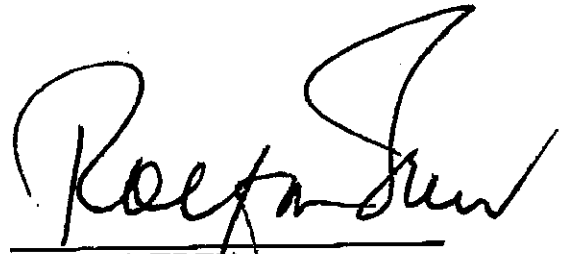
11 DATED: JUN 25 2008

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 ROLF M. TREU
 Judge of the Superior Court

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