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## Ninth Circuit Holds Charter School is Not A State Actor Under Section 1983

In Caviness v. Horizon Community Learning Center, Inc., \_\_\_ F.3d \_\_ [2010 WL 6261], a former charter school teacher filed an action under 42 U.S.C. section 1983 (“Section 1983”), claiming the charter school deprived him of his ability to seek new employment by making allegedly false statements about him to potential employers. The Ninth Circuit Court of Appeals, affirming the district court’s decision, held that the teacher could not sustain an action pursuant to Section 1983 because he could not show that the charter school, a private non-profit corporation, acted under the color of state law.

The plaintiff in this case was a high school teacher at the defendant charter school, located in Arizona. The charter, after concluding that the teacher used questionable judgment with a female student, decided not to renew his employment contract. The charter’s executive director subsequently sent a letter explaining the decision not to renew the contract to the teacher and state department of education. In addition, the executive director informed the Mesa School District, where the teacher had applied for a position, that the charter had declined to renew his contract. The teacher filed suit against the charter and its director.

In order to prevail on a claim brought pursuant to Section 1983, a plaintiff must show that he was deprived of a federal right as the result of conduct by a state actor. In this case, the teacher argued that all charter schools are automatically state actors under Arizona Law. He also argued that the following characteristics of a charter school were sufficient to support a finding that it was a state actor for purposes of Section 1983 damages: (1) Arizona law specifically designates charter schools as public schools; (2) charter schools provide a public education, which is traditionally the prerogative of the state; (3) Arizona regulates the personnel matters of charter schools; (4) charter schools are permitted to participate in the state’s retirement system; (5) the charter school’s sponsoring district had the power to approve the charter, including personnel policies; and (6) charter school boards were “political subdivisions” for purposes of application of open meeting laws.

The Ninth Circuit explained that, even when a private entity can be considered a state actor for one purpose, it will not necessarily be so for others. Courts must look at the specific conduct at issue and, in this case, the question was whether the actions taken as an employer constituted state action.

Generally, the court rejected all of the teacher’s arguments and upheld the lower court’s dismissal of the lawsuit. Specifically, it held that the provision of an education at public expense is not the exclusive business of the state, noting the existence of private schools. The court further commented that the mere fact that there are public regulations governing the personnel matters of a charter school does not make the charter school into a state actor unless the challenged action is “compelled or even influenced by any state regulation.” Additionally, the court rejected the pension argument, noting that state governments are permitted to subsidize private entity retirement plans without converting those entities into state actors. Finally, the court was not persuaded by the fact that the charter school’s policies were approved by a state

entity; “action taken by private entities with the mere approval or acquiescence of the State is not state action.”

Although the court clearly noted that this case was governed by Arizona law, we would expect the analysis to be applicable in California, given a similar set of facts. As in Arizona, California law provides for the creation of charter school through a public entity, which is funded by public money and operates under public school oversight, but which does not otherwise need to follow all statutes and regulations applicable to public schools. However, as provided for by this decision, each situation must be evaluated to determine if there is a sufficient nexus between the conduct at issue and the state to conclude that the action took place under the color of state law. If its actions are viewed as those of a state actor, it may subject it to liability under Section 1983.

Please contact one of our five offices if you have any questions regarding this case and its implications for your district.

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