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PERSPECTIVE

State's charity supervision law is unconstitutional, judge finds

By Malcolm Maclachlan
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Attorneys for a Catholic organization say a recent court ruling will force the state Department of Justice to be more careful about how it pursues fraud claims against charities soliciting donations.

Los Angeles County Superior Court Judge James C. Chalfant's March 18 order found the attorney general may have been correct in arguing the Catholic Medical Mission Board Inc. misled potential donors, but he also found several parts of the state law governing the supervision of charities to be unconstitutional. The problems with the law negated the \$409,575 fine the state imposed even though "the weight of the evidence supports the attorney general's finding that ... solicitations were deceptive," Chalfant wrote.

"What we think makes this case so significant is, with this order and a prior order in January, the judge has just thrown out two of the primary enforcement mechanisms the attorney general is using for nonprofits," Paul D. Murphy, who represents the plaintiffs as a part-

ner with Murphy Rosen LLP in Santa Monica, said in an interview Friday.

Chalfant said Section 12599.6(f) (2) of the Government Code "does not survive strict scrutiny, facially or as applied." The section references "using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion | or misunderstanding." Chalfant found that as written, the code section "does not provide the breathing room required for protected speech and is not narrowly tailored to meet a compelling state interest."

In his Jan. 7 ruling in the same case, Chalfant also threw out another code section on the grounds it was an "invalid prior restraint." That one allowed the attorney general to issue cease and desist orders to charities that make false statements or refuse to produce records or financial reports.

A spokesperson said the Department of Justice was reviewing the ruling and couldn't comment. *Catholic Medical Association Board, Inc. v. Attorney General of the State of California*, 20STCP-01520 (L.A. Super. Ct., filed April 28, 2020).

Chalfant's latest ruling also referenced two related cases,

Map International, Inc. v. Berra, 20STCP01535 (L.A. Super. Ct., filed April 30, 2020) and *Food for the Poor, Inc. v. Attorney General of the State of California*, 20STCP01626 (L.A. Super. Ct., filed May 8, 2020).

The plaintiffs challenged a ruling from a state administrative law judge whom the Department of Justice had asked to find that the Catholic Medical Mission Board had overvalued the pharmaceutical donations by failing to follow generally accepted accounting principles.

The administrative law judge found the board did not overvalue these donations, but accepted the state's theory that the charity misled potential donors by making it appear that the 97% or more of cash donations would be used for aid, which wasn't true.

"The ALJ accepted the attorney general's fallback position without meaningful analysis," Chalfant wrote. "He further concluded that the [Catholic Medical Mission Board] had no First Amendment right to use the program efficiency ratio even if accurately calculated."

The Legislature passed these code sections in 2012 under AB 2327 and 2015 as AB 556. Both laws were part of a multiyear effort to give the

Department of Justice more tools to crack down on fraudulent charities. An Assembly analysis of AB 2327 noted a 2010 settlement with a group that purported to raise money for firefighters and burn victims but distributed as little as 10% of funds raised. The analysis found that state was limited to "inconsequential" fines that did not provide "sufficient deterrent."

Murphy said the laws went too far. He noted the administrative law judge reports to the attorney general. Getting an adverse administrative ruling, he added, could force an underfunded charity to go through what he described as an onerous, expensive two-year process culminating in the latest ruling. The result, Murphy said, was that it was easy for the attorney general to enjoin speech without meaningful judicial review.

"Our argument was the charitable solicitations, under long established Supreme Court precedent, are actually protected speech under the First Amendment," said Daniel N. Csillag, also a partner with Murphy Rosen. "You can't have strict liability for protected speech. ... There's got to be some level of intent to deceive." ■

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