

1989

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Recommended Citation

Donald S. Yarab, *Spallone v. United States: Simply a Case of an Abuse of Discretion*, 40 Case W. Rsrv. L. Rev. 1147 (1989)

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SPALLONE V. UNITED STATES: SIMPLY A CASE OF AN ABUSE OF DISCRETION?

IN *SPALLONE V. UNITED STATES*,¹ the Supreme Court of the United States held that it was an abuse of discretion for the district court to hold four Yonkers city councilmembers in contempt for refusing to vote in favor of legislation implementing a consent decree earlier approved by the city. The legislation would have remedied the intentional racial housing segregation that the city had engaged in over a period of many years.²

The Court announced that its decision was based solely on traditional equitable principles and specifically declined to address two of the defenses raised by the defendant councilmembers.³ The first defense raised by the councilmembers was that the district court's imposition of contempt sanctions violated their free speech rights under the first amendment. Their second defense was that the contempt sanctions violated the federal common law doctrine of legislative immunity.⁴

In spite of the Court's declaration that this was simply a case of an abuse of discretion by the district court, the opinion was clearly influenced by deference to the principles behind the federal common law doctrine of legislative immunity. As such, this case is worthy of comment.

I. BACKGROUND

In 1980, the United States filed a complaint against the city of Yonkers and the Yonkers Community Development Agency (YCDA) alleging that the two defendants had engaged in housing discrimination in violation of Title VII of the Civil Rights Act of 1968 and the equal protection clause of the fourteenth amendment.⁵ The United States claimed that the city had equated subsidized housing with minority housing, and therefore restricted subsidized housing projects to areas of the city already predominantly

1. 110 S. Ct. 625 (1990).
2. *Id.* at 628.
3. *Id.* at 631.
4. *Id.*
5. *Id.* at 628.

populated by minorities.⁶ In 1985, the United States District Court for the Southern District of New York found the city and the YCDA liable, concluding that the city had engaged in actions both "consistent and extreme" in an effort to preserve existing patterns of segregation in the city.⁷

The district court entered a remedial order in 1986 that enjoined the city and its development agency, their officers, agents, employees, and others acting in concert with them, from intentionally promoting racial segregation in Yonkers and required the city to take extensive affirmative steps to disperse public housing throughout the city of Yonkers.⁸

While the appeal of the liability and remedial orders was pending, the city failed to comply with the remedial order. The United States moved for an adjudication of civil contempt and the imposition of coercive sanctions, but the district court refused to take such action.⁹

The United States Court of Appeals for the Second Circuit affirmed the first judgment of the district court in all respects¹⁰ and the Supreme Court subsequently denied *certiorari*.¹¹

Shortly after the Court of Appeals affirmed the decision of the district court, the parties agreed to a consent decree that set forth certain actions the city would take to implement the remedial order. These actions included the adoption, within 90 days, of legislation which conditioned the construction of multifamily housing on the inclusion of at least 20 percent assisted units, granting tax abatements and density bonuses to developers, and providing for zoning changes.¹² The consent decree was approved by the city council in a five-to-two vote (Councilmembers Spallone and Chema voting no) and entered by the district court shortly thereafter.¹³

The city, however, continued to delay implementing the legislation required under the consent decree. This prompted the district court to enter an order requiring the city to enact the legisla-

6. *Id.*

7. *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1369 (S.D.N.Y. 1985).

8. *United States v. Yonkers Bd. of Educ.*, 635 F. Supp. 1577 (S.D.N.Y. 1985).

9. *Spallone v. United States*, 110 S. Ct. 625, 629 (1990).

10. *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987).

11. 486 U.S. 1055 (1988).

12. *Spallone*, 110 S. Ct. at 629.

13. *Id.*

tion and providing that the failure to do so would result in contempt citations, escalating daily fines for the city, and daily fines and imprisonment for councilmembers who remained in contempt.¹⁴

In spite of the district court's threatened sanctions, the city council defeated a resolution of intent to adopt the required legislative package by a vote of four to three.¹⁵ The district court then held the city in contempt and imposed sanctions on it. After questioning the individual councilmembers as to their failure to adopt the required legislation, the court held each of the four councilmembers voting no on the package in contempt and imposed sanctions.¹⁶ The court refused to accept the councilmembers' arguments that the city of Yonkers alone was the proper subject of contempt sanction and overruled their objection that the court lacked the power to direct the councilmembers how to vote. The court ruled that in light of the earlier consent decree, the city's adoption of the required legislation would be "in the nature of a ministerial act."¹⁷

The court of appeals affirmed the adjudications of contempt and sanctions against both the city and the councilmembers, rejecting the argument that the district court had abused its discretion in selecting the method of enforcing the consent judgment.¹⁸ The court of appeals also rejected the defendants' invocation of the federal common law doctrine of legislative immunity and first amendment protection.¹⁹

Both the city and the councilmembers requested the Supreme Court to stay the imposition of sanctions pending filing and disposition of petitions for *certiorari*. The Court granted a stay for the councilmembers but denied the city's request.²⁰ When the city's daily contempt sanctions approached one million dollars per day, the city council enacted the required legislation by a vote of five to two (Councilmembers Spallone and Fagan voting no).²¹ The Supreme Court, recognizing that the contempt citations on the councilmembers raised important issues about the appropriate ex-

14. *Id.* at 630.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *United States v. City of Yonkers*, 856 F.2d 444, 455-57 (2d Cir. 1988).

20. *Spallone*, 110 S. Ct. at 631.

21. *Id.* at 631.

ercise of federal judicial power, granted *certiorari*.²²

II. *SPALLONE V. UNITED STATES*

A. The Majority Opinion

Chief Justice Rehnquist, author of the majority opinion, framed the issue as whether "it was a proper exercise of judicial power for the district court to hold petitioners, four Yonkers city councilmembers, in contempt for refusing to vote in favor of legislation implementing a consent decree earlier approved by the city."²³ The Court noted that there was no question as to the liability of the city of Yonkers for racial discrimination or to the appropriateness of the district court's remedial order — it was within the bounds of the court's discretion.²⁴

The councilmembers argued that the district court's contempt sanctions violated their rights of freedom of speech under the first amendment, and further, "that they [were] entitled, as legislators, to absolute immunity for actions taken in discharge of their legislative responsibilities."²⁵ The Court did not address these issues because it concluded that the district court's order imposing contempt sanctions against the councilmembers if they failed to vote in favor of the court ordered legislation was an abuse of the trial court's discretion under traditional equitable principles.²⁶

The Court noted that the district court was entitled to rely on the axiom that "courts have inherent power to enforce compliance with their lawful orders through civil contempt."²⁷ Further, "[w]hen the district court's order is necessary to remedy past discrimination, the court has an additional basis for the exercise of broad equitable powers."²⁸ However, the Court noted that a trial court's equitable remedial powers are not unbounded. The Court emphasized that a district court must be sensitive to the interest which state and local authorities have in handling their duties.²⁹ The Court also observed that "the use of the contempt power places an additional limitation on a district court's discretion, for

22. *Spallone v. United States*, 109 S. Ct. 1337 (1989).

23. *Spallone v. United States*, 110 S. Ct. 625, 628 (1990).

24. *Id.* at 631.

25. *Id.*

26. *Id.*

27. *Id.* at 632 (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)).

28. *Id.* at 632.

29. *Id.* (citing *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977)).

“in selecting contempt sanctions, a court is obliged to use the ‘least possible power adequate to the end proposed.’”³⁰

In evaluating the present case in light of these principles, the Court recognized as important the fact that the councilmembers were not parties to the original action against the city and were not found “liable for any of the violations upon which the remedial decree was based.”³¹ The city, in fact, capitulated under its contempt sanctions even while the contempt sanctions against the councilmembers were stayed.³² Thus, the Court reasoned that the district court could have achieved its desired goal of forcing the city to implement the mandated legislative package without imposing contempt sanctions on the individual councilmembers. The district court should have considered sanctions on the councilmembers, according to the Court, only if after a reasonable time the sanctions against the city alone had failed to accomplish the necessary result.³³

Chief Justice Rehnquist also contemplated the federal common law of legislative immunity. The Court previously had held that the legislative acts of state and regional legislators were absolutely privileged.³⁴ However, the Court determined that these earlier cases did not “control the question whether local legislators [were] immune from contempt sanctions imposed for failure to vote in favor of a particular legislative bill.”³⁵ Nonetheless, the Court noted that the considerations behind the legislative immunity doctrine should have been considered by the district court in its exercise of discretion in the present case.³⁶

According to the Court, the imposition of contempt sanctions on individual legislators is designed to cause them to vote, not with their constituents’ interests in mind, but rather with their own personal interests in mind.³⁷ Such contempt sanctions encourage legislators to declare that they favor particular legislation not to avoid bankrupting the city, but instead to avoid bankrupt-

30. *Id.* (quoting *United States v. City of Yonkers*, 856 F.2d 444, 454 (2d Cir. 1988) (quoting *Anderson v. Dunn*, 18 U.S. (6 Wheat.) 61, 69 (1821)).

31. *Id.* at 632-33.

32. *Id.* at 633.

33. *Id.*

34. *Id.* (citing *Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 404-05 (1979)).

35. *Id.* at 633-64.

36. *Id.* at 634.

37. *Id.*

ing themselves, resulting in a "perversion of the normal legislative process."³⁸ On the other hand, where the legislators are voting in favor of legislation to avoid bankrupting the city alone, they are, suggested the Court, engaged in a "calculus" with which they are well-familiar.³⁹

The Court, therefore, concluded that in view of the "extraordinary" nature of the contempt sanctions imposed against the councilmembers, the district court should have first imposed contempt sanctions on the city alone before even considering imposing contempt sanctions against the councilmembers.⁴⁰ This squares, the Court said, with "the doctrine that a court must exercise 'the least possible power adequate to the end proposed.'"⁴¹

B. The Dissenting Opinion

The dissenting opinion was written by Justice Brennan, with whom Justices Marshall, Blackmun, and Stevens joined.⁴² Justice Brennan began by noting that the district court judge who had imposed the contempt sanctions on the councilmembers had "intimate contact" with the councilmembers for many years and possessed "special insight" into the best way to coerce compliance with the court's remedial order when all cooperative efforts had failed.⁴³ He suggested that the majority's opinion was an "*ex post* rationalization" of the case and did a great injustice to both the facts of the case and the art of judging.⁴⁴

The dissent noted that the majority's opinion rested on two misguided premises: (1) the district court should have known that there was a reasonable probability that contempt sanctions against the city alone would have produced the desired results; and (2) imposing personal contempt fines on the councilmembers effected a greater perversion of the legislative decision-making process than contempt sanctions on the city alone.⁴⁵

Justice Brennan attacked the first premise by noting that the Court erred in "according no weight" to the district court's

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* (quoting *Shillitani*, 384 U.S. at 371 (citations omitted)).

42. *Id.* at 635-48 (Brennan, J., dissenting).

43. *Id.* at 635 (Brennan, J., dissenting).

44. *Id.* (Brennan, J., dissenting).

45. *Id.* at 640 (Brennan, J., dissenting).

“vastly superior vantage point.”⁴⁶ Further, the Court turned a “blind eye” to the evidence available that supported the district court’s assessment that sanctions were necessary on both the city and the councilmembers.⁴⁷ To emphasize the last point, Justice Brennan extensively recited the history of the case.⁴⁸ Finally, he argued that the Court failed to acknowledge that the imposition of contempt sanctions on both the city and the councilmembers could more *promptly* secure a compliance with the court’s order.⁴⁹ Justice Brennan concluded his attack on the majority’s first premise by stating that the “Court’s determination to play district court-for-a-day — and to do so poorly — is indefensible.”⁵⁰

Justice Brennan then took aim at the majority’s second premise. He noted that while the Court refused to hold that the doctrine of absolute legislative immunity was applicable to local legislators, it did rule that the principles underlying the doctrine, namely legislative independence, must “inform” the district court in its exercise of discretion in imposing contempt sanctions.⁵¹ This position presumed “that a district court, while seeking to coerce compliance with a consent decree promising to implement a specific remedy for a constitutional violation, must take . . . care to preserve the ‘normal legislative process.’”⁵² Justice Brennan pointed out that this was inconsistent with the Court’s approach to the executive decision-making process, which is analogous to the legislative decision-making process. In the executive decision-making process, the Court “has never evinced an overriding concern for replicating the ‘normal’ decisionmaking process when designing coercive sanctions for state and local executive officials.”⁵³ Why, then, he asked, should the Court do so for legislators at the local level?

Justice Brennan labeled as misguided the majority’s claim that the imposition of sanctions on the councilmembers perverted the normal legislative decision-making process. He argued the “*result* of the councilmembers’ ‘calculus’ is preordained, and the only relevant question is how the court can best encourage — or if nec-

46. *Id.* at 641 (Brennan, J., dissenting).

47. *Id.* (Brennan, J., dissenting).

48. *Id.* (Brennan, J., dissenting).

49. *Id.* at 643 (Brennan, J., dissenting).

50. *Id.* (Brennan, J., dissenting).

51. *Id.* at 644 (Brennan, J., dissenting).

52. *Id.* (Brennan, J., dissenting).

53. *Id.* (Brennan, J., dissenting).

essary coerce — compliance.”⁵⁴

Finally, he argued that “once a federal court has issued a valid order to remedy the effects of a prior, specific constitutional violation, the representatives are no longer ‘acting in a field where legislators traditionally have power to act.’”⁵⁵ Indeed, it seemed clear that the wish of a legislative body cannot take precedence over an order to conform to the Constitution.⁵⁶

Thus, Justice Brennan concluded, the Court’s decision invoked “no principle of any sort” and sent a message to district courts that “even the most delicate remedial choices by the most conscientious and deliberate judges are subject to being second-guessed by” the Court.⁵⁷ Such a result, he ruled, can only “embold[en] recalcitrant officials [to] continually . . . test the ultimate reach of the remedial authority of the federal courts.”⁵⁸

III. ANALYSIS

The majority’s opinion was both well-written and persuasive. Its choice to narrowly focus only on the issue of whether there was an abuse of discretion was appropriate because this issue was sufficient to resolve the present case. While it is disappointing that the majority did not address the tantalizing first amendment and legislative immunity claims raised by the councilmembers, it is understandable given that the case could be and was decided on non-constitutional grounds. One can only hope, however, that none who read the opinion are lead to believe that legislative immunity has been held not to extend to local legislators.

The majority’s thorough recitation of the principles that guided its evaluation of the district court’s exercise of discretion signaled reliance on well-developed principles in spite of the dissent’s claims to the contrary. The majority’s use of the principles underlying the federal common law doctrine of legislative immunity to “inform” the court of the appropriateness of contempt sanctions on local legislators was somewhat disingenuous. In fact, an honest assessment of the opinion suggests that the Court’s use of these principles was dispositive of the case. It is on these

54. *Id.* at 646 (Brennan, J., dissenting).

55. *Id.* at 645 (quoting *Tenney v. Brandhove*, 341 U.S. 367, 379 (1951)) (Brennan, J., dissenting).

56. *Id.* (Brennan, J., dissenting)

57. *Id.* at 648 (Brennan, J., dissenting).

58. *Id.* (Brennan, J., dissenting).

grounds that the majority's opinion is open to criticism. The opinion should have more clearly articulated the weight that was given to legislative immunity considerations. If it had done so, the majority would be less open to the dissent's burning criticisms.

The dissent's observation that the majority seemed to be second-guessing the district court judge was persuasive on its face. However, when considering the appropriate role of the reviewing court, all reviewing courts who overturn a lower court are open to the same charge from those who agree — for whatever reason — with the lower court's decision.

The majority also failed to respond to the dissent's argument that the perversion of the normal legislative decision-making process caused by contempt sanctions on legislators was no greater than the perversion of the executive decision-making process caused by sanctions on members of the executive branch, a clearly analogous situation in which the Court has had no such compunctions. Additionally, the majority was oddly silent on the claim that the councilmembers' actions being sanctioned were not "legislative" in nature and, therefore, the sanctions were not impinging on legislative powers and immunities.

The dissent's harsh words for the majority and its attempt to persuade by sheer volume of opinion undercut the effectiveness of its opinion. The dissent would have been wiser to address the principles underlying the doctrine of legislative immunity rather than hurling insults at the majority. The dissent, as noted earlier, effectively demonstrated the inconsistency in the majority's argument that contempt sanctions on the councilmembers were a "perversion" of the normal legislative decision-making process. Justice Brennan though, failed to press the attack and explain why the principles of legislative independence, among the others that the majority relied on, should not have been used to overturn the lower court's contempt sanctions.

Further, the dissent's argument seemed to be that under no circumstances whatsoever should a lower court be overturned for an abuse of discretion. It almost seemed as if the dissent was arguing not only for substantial deference, but for absolute deference to the lower court. In this respect, the dissent should have articulated some guiding principles to more clearly demonstrate the circumstances in which a court abuses its discretion and why the present case was not such an abuse.

The dissent's assertion that a valid court order remedying past constitutional violations should be subject to no counter-

vailing concerns is wide of the mark. Clearly the dissent was not suggesting that the courts can exercise unlimited power, especially when a lesser exercise of power would be sufficient. What, then, was it arguing for? Perhaps the dissent should have more carefully read the majority's opinion, paying particular attention to the principles recited governing a court's equitable powers. If it had done so, it would have realized that the argument it was making was untenable and contrary to well-established principles.

Finally the dissent's claim that it was appropriate to impose contempt sanctions on the councilmembers to encourage prompt compliance with its order is interesting but unpersuasive in light of the majority's conclusion that the district court needed only attempt lesser sanctions first only for a reasonable amount of time. To accept the dissent's viewpoint is to believe that a reasonable amount of time is no time at all.

IV. CONCLUSION

Though the majority's opinion was not without flaws, it was the more persuasive of the two opinions and reached the proper result for the case. The dissent's opinion, though it possessed a few valuable insights and identified weaknesses in the majority opinion, seemed to be predicated on the belief that absolute deference should be paid to lower courts, that lower courts may use unlimited powers in remedying constitutional violations, and that any review for abuse of discretion was inappropriate. Such an opinion is both frightening in its implications and inconsistent with a nation governed by law. Finally, it cannot be emphasized enough that the issue of legislative immunity was not at issue in this case and may still be available for argument given the right circumstances.

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