

Amicus Curiae Briefs Civil Rights/Equal Rights

Domestic Violence

Case: *Freedom of Information Commission v. Domestic Violence Services of Greater New Haven, Inc.*

Court: Appellate Court of Connecticut, 1998

Amicus Brief: The Connecticut Association of Residential Facilities

Case: The plaintiff, Domestic Violence Services of Greater New Haven, is a non-profit organization that provided many services for women and children. The issue is whether the trial court's decision should be correctly sustained because it correctly held that Domestic Violence Services of Greater New Haven, Inc. is not the functional equivalent of a public agency for the purposes of the Freedom of information Act.

Amicus Brief: The brief argues that receipt of public funds alone does not make an organization a public agency. An organization that receives funds from the State but is not controlled by the State is not a functional public agency. Such control can be evidenced by day-to-day supervision, something that is lacking in this situation. The brief also explains that the impact of a finding that DVS is a public agency is that all agencies which receive public funds would be relegated to public agency status.

CWEALF: CWEALF joined this brief because it believes that mere receipt of state funding does not make an organization a public agency whose records are thereby open to public scrutiny. If all such organizations, including CWEALF, DVS, and other organizations whose callers depend on some modicum of confidentiality were forced to open its records to anyone who desired information, fewer women in need of aid would call for fear of being discovered. These women would not only suffer because they would not benefit from legal information, they would also be in greater jeopardy for they would be less likely to find methods by which they could help themselves.

Holding: The Appellate Court ruled that the Domestic Violence Services are not a public agency for the purposes of the Freedom of Information Act. While DVS may provide a government service, it only does so by contract and plays no decision-making role in forming the policies or the programs of governmental services. Furthermore, the State does not provide daily control over DVS.

Case: *Doe v. Doe*

Court: United States District Court for the District of Connecticut; United States Court of Appeals for the Second Circuit, 1996

Amicus Brief: Connecticut Women's Education and Legal Fund

Case: A woman who was subjected to physical and mental abuse by her husband over a seventeen month period filed suit against him for money damages under the Violence Against

Women Act's civil rights remedy. The husband claimed that Congress did not have the authority to impose liability on private citizens under the Fourteenth Amendment.

Amicus Briefs: The briefs defend the constitutionality of the Remedy under both the Commerce Clause and § 5 of the 14th Amendment. They argue that Congress could have reasonably believed that violence against women substantially affects commerce, based in part of the four years of legislative history devoted to such findings, and, as such, could have believed that VAWA was a rational response to that effect on commerce. In the alternative, the briefs argue that Congress has the power to redress discrimination under § 5 of the Fourteenth Amendment, and that the action Congress can redress by that section is not limited to state action but includes private action as well. Under this rubric, Congress' enactment of VAWA was rationally related to the ending gender-based violence, a type of discrimination that state and local laws have failed to address for years.

CWEALF: CWEALF wrote the brief because of its belief that in order to stop gender based violence, the perpetrators of that violence need to be answerable both criminally and civilly. CWEALF believes that the right to recover damages for crimes motivated by gender-based animus is essential for the equalization of power in our society.

Holding: The District Court found that VAWA was a constitutional exercise of Congress' power under the commerce clause and that the civil rights remedy was narrowly tailored to meet the legitimate end of ending the gender-based violence that sufficiently affects interstate commerce. While this case was argued before the Second Circuit on appeal, the parties settled prior to that court issuing an opinion, thereby leaving intact the decision of the District Court.

Case: *Culberson v. Doan*

Court: United States District Court of the Southern District of Ohio Western Division, August 1998

Amicus Brief: NOW Legal Defense and Education Fund

Case: The victim and the defendant had been involved in a romantic relationship during and after which the defendant physically abused the victim. The victim allegedly filed several complaints with the local police, but these complaints were never investigated. On August 29, 1996, a neighbor witnessed the defendant hitting the victim in the head. He was also seen several hours later carrying a handgun and garbage bags out of a relative's home. The victim's mother telephoned the police later that day to report the victim missing; the police conducted a search of the relative's home several days later. During this search, dogs found the victim's scent in a pond; this was not searched until the next day. Though the pond was empty by them, footprints could be seen leading away from it. The victim's body was never found, but the defendant was convicted of her murder and sentenced to life in prison. The victim's family filed a civil action against the defendant, his accomplices, and the police chief pursuant to the Violence Against Women Act, 42 U.S.C. § 13981. The defendant filed a motion to dismiss for the plaintiffs' failure to state a claim and on the basis that VAWA is unconstitutional.

Amicus Brief: The brief focuses on the constitutionality of VAWA, first arguing that it is a constitutional exercise of Congress' commerce power and, in the alternative, arguing that it is a constitutional exercise of Congress' power under § 5 of the Fourteenth Amendment. The brief argues that Congress could have reasonably believed that violence against women substantially affects commerce, based in part of the four years of legislative history devoted to such findings, and, as such, could have believed that VAWA was a rational response to that effect on commerce. In the alternative, the brief argues that Congress has the power to redress discrimination under § 5 of the Fourteenth Amendment, and that the action Congress can redress by that section is not limited to state action but includes private action as well. Under this rubric, Congress' enactment of VAWA was rationally related to the ending gender-based violence. The brief also suggests that when determining whether an action constitutes gender-based violence, the courts should apply a "totality of the circumstances" test that looks at circumstantial evidence of gender bias. This is the same test applied in Title VII discrimination cases and in criminal cases in several jurisdictions.

CWEALF: CWEALF joins the brief because it recognizes that violence against women is a societal epidemic to which the Violence Against Women Act provides a partial response. By upholding the constitutionality of this law, CWEALF believes the courts will help put a negative image on violence against women and set forth the view that such gender-motivated violence will not be silently condoned.

Holding: The Court held that threats that the victim stay away from other men was conduct sufficient to show gender-based animus, thus providing a claim under VAWA. The Court also found VAWA to be a valid exercise of Congress' commerce power, finding that the legislative history provided ample evidence that violence against women affected commerce substantially. The Court did not address the validity of VAWA under the Fourteenth Amendment.

Note: The United Supreme Court, in United States v. Morrison (2000), held that the remedy section of VAWA was an unconstitutional exercise of Congress' power under either the Commerce Clause or § 5 of the Fourteenth Amendment.

Case: *White v. El Gabri; Bentley v. El Gabri*

Court: United States District Court for the District of Rhode Island, 1998

Amicus Brief: NOW Legal Defense and Education Fund

Case: White and Bentley were sexually assaulted during the course of their professional patient-doctor relationship with El Gabri. After filing their complaints with the state medical board, Dr. El Gabri's license was revoked. The women then filed a claim against El Gabri under VAWA.

Amicus Brief: The brief defends the constitutionality of the Remedy under both the Commerce Clause and § 5 of the 14th Amendment. It argues that Congress could have reasonably believed that violence against women substantially affects commerce, based in part of the four years of legislative history devoted to such findings, and, as such, could have believed that VAWA was a rational response to that effect on commerce. In the alternative, the brief argues that Congress has the power to redress discrimination under § 5 of the Fourteenth Amendment, and that the action Congress can redress by that section is not limited to state action but includes private

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Holding: The Court denied the motion for leave to file an amicus brief in support of the constitutionality of the civil rights remedy of the Violence Against Women's Act. No further information is available.