

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, October 12, 2011

No. 190 *Bordeleau v State of New York*

In this declaratory judgment action, 50 New York taxpayers challenge the constitutionality of state appropriations to the Department of Agriculture and Markets and two public benefit corporations (PBCs) for ultimate distribution to private entities for economic development projects. They argue, in part, that this funding violates article VII, § 8(1) of the State Constitution, which prohibits gifts or loans of state money or credit to private entities. The challenged appropriations and grants included funding through Ag & Markets for promotional activities by the New York Apple Growers Association and the Long Island Wine Council to encourage consumption of New York agricultural products, and funding through PBCs for semiconductor manufacturing facilities in Saratoga, Albany and Dutchess Counties and renovation of a hotel in downtown Buffalo. The plaintiffs sued the State, its Urban Development Corp. (UDC) and Erie Canal Harbor Development Corp., and six private companies, including International Business Machines Corp., West Genesee Hotel Associates, and GlobalFoundries U.S., Inc.

Supreme Court dismissed the suit, ruling there was no violation of the gift or loan provision. It said, "The State is authorized to provide funding to a public benefit corporation, including [UDC].... The very purpose of the [UDC] is to promote the State's policy of enhancing job opportunities, urban renewal and economic development.... A review of the [UDC] projects at issue here shows that each speaks to a viable public, economic development purpose...." It said Ag & Markets "is expressly authorized to aid in the promotion and marketing of New York's wine and grape products" and its appropriations to fund promotional contracts with non-profit agricultural organizations are not barred under Article VII, § 8.

The Appellate Division, Third Department modified by reinstating the claim that the appropriations "indirectly gave state funds to private entities in violation of ... article VII, § 8(1) by passing the funds through [Ag & Markets] and the PBCs before disbursement." It said, "Giving the funds to private entities by channeling them through authorized public entities will not shield these appropriations from challenge, for the State may not do "indirectly that which cannot be done directly"...." It said the constitutionality of the appropriations does not depend on whether they served a public purpose, but "whether their public benefits constitute sufficient consideration while the private benefits are merely incidental." The question was not resolved as a matter of law by the defendants' submissions "showing their public purposes," it said, and remitted the matter to Supreme Court for further proceedings.

The defendants argue that "appropriations for the public purpose of promoting economic development" do not violate article VII, § 8. "Recent precedents establish that an appropriation is valid ... so long as it has a predominant public purpose and any private benefit is purely incidental," the State says, claiming the challenged appropriations meet this standard. It also argues the appropriations "were not gifts at all because the recipients agreed to create jobs or provided other valuable consideration to the State in exchange for the funds."

For appellant State: Solicitor General Barbara D. Underwood (518) 474-1394

For appellant IBM: Teena-Ann V. Sankoorikal, Manhattan (212) 474-1000

For appellant West Genesee Hotel: Kevin J. Cross, Buffalo (716) 853-5100

For appellant GlobalFoundries: Harold Iselin, Albany (518) 689-1400

For respondents Bordeleau et al: James Ostrowski, Buffalo (716) 435-8918