Chief Justice Ronald M. George: The Most Notable Opinions

December 30, 2010 by Kirk Jenkins

For the final day of our profile of retiring California Chief Justice Ronald M. George, we offer our own subjective list of the Chief Justice's most notable opinions. If anyone has a nomination for a favorite case that belongs on this list – and there are many important opinions that aren't here – explain in the comments section.

***In re Marriage Cases*, 43 Cal.4th 757 (2008)** – Reversing the Court of Appeal, the Supreme Court held that provisions of the Family Code defining marriage as between a man and a woman violated the fundamental constitutional right to marry of all Californians. This was so for several reasons: (1) the exclusion of gay couples from the designation of marriage was not necessary to afford full protection to the rights and benefits accorded opposite-sex couples; (2) denying the designation "marriage" to same-sex couples would impose appreciable harm on such couples and their children; (3) denying same-sex couples the designation of "marriage" would be perceived as reflecting an official view that such relationships are of lesser dignity, and that same-sex couples and gay individuals are in some respects "second-class citizens."

***Costa v. Superior Court*, 37 Cal.4th 986 (2006)** – In a legal challenge to Proposition 77, the Supreme Court found that where a challenger questioned whether an voter initiative was properly before the voters – as opposed to the substantive validity of the change in law made by the initiative – it should, as a general matter, be resolved before the election. The Court further held that technical deficiencies in referendum and initiative petitions should not invalidate the petitions if they are in substantial compliance with statutory and constitutional requirements.

***Yanowitz v. L'Oreal USA, Inc.*, 36 Cal.4th 1028 (2005)** -- The Supreme Court held that a plaintiff's refusal to follow an order which he or she reasonably believed to be discriminatory was a protected activity within the meaning of the Fair Employment and Housing Act, so long as the employee's communications to the employer sufficiently convey the employee's reasonable concerns that the employer has acted or is acting in an unlawful manner. The Court concluded that the appropriate test for determining an adverse employment action within the meaning of the statute was whether the action materially affected the terms and conditions of employment.

***Miller v. Department of Corrections*, 36 Cal.4th 446 (2005)** – Reversing the Court of Appeal, the Supreme Court held that a plaintiff could establish an actionable claim under the FEHA by demonstrating, in a case involving a supervisor who allegedly gave favorable employment opportunities to a person with whom he was having an affair, that the sexual favoritism was so severe or pervasive as to alter his or her working conditions and create a hostile environment.

***Aguilar v. Avis Rent a Car System, Inc.*, 21 Cal.4th 121 (1999)** – In an action for employment discrimination and wrongful discharge, the trial court entered an injunction directing defendant to cease and desist from using derogatory racial or ethnic epithets directed at Hispanic/Latino employees. The Supreme Court affirmed,

holding that the injunction was not a prior restraint barred by the First Amendment. The Court pointed out that the vice of a prior restraint is that communication will be suppressed before an adequate determination that it is unprotected by the First Amendment. Plaintiffs' speech, in contrast, had been adjudicated to be unprotected on the grounds that it contributed to a hostile working environment. The Court held that enjoining the continuation of unprotected speech was not contrary to the Federal or state constitution.

***NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal.4th 1178 (1999)** -- The Court held that as a general matter, the First Amendment protects the right of access to civil trials and proceedings. Under Code of Civil Procedure Section 124, a proceeding may not be closed unless the trial court provides public notice of the intent to hold closed proceedings; and after a hearing, expressly finds that (1) an overriding interest supports closure, (2) there is a substantial likelihood of prejudice to that interest absent closure, (3) the closure is narrowly tailored to protect the threatened interest, and (4) there is no less restrictive means available.

***Curran v. Mount Diablo Council of the Boy Scouts of America,* 17 Cal.4th 670 (1998)** -- Plaintiff's application to serve as an assistant scoutmaster was rejected, and he sued under the Unruh Act, alleging that the rejection was on grounds of his homosexuality. The Supreme Court held that the Boy Scouts were not a "business establishment" within the meaning of the Unruh Act, noting that although the Scouts regularly engaged in business transactions with nonmembers, the primary function of the Scouts was to inculcate certain values in youth members. Nor did business transactions with nonmembers involve sale of access to the basic activities or services offered by the organization.

***American Academy of Pediatrics v. Lungren,* 16 Cal.4th 307 (1997)** -- The Supreme Court affirmed a judgment permanently enjoining the enforcement of a state statute requiring parental consent or judicial authorization before a minor may obtain an abortion. The Court acknowledged that certain parental consent laws had been upheld at the Federal level, but pointed out that the right to privacy protected by the state constitution was, in many contexts, broader and more protective of privacy than the federal right. The Court held that because the statute intruded upon an interest fundamental to personal autonomy, it was subject to scrutiny under the compelling interest test. The Court concluded that the statute could not be upheld on the grounds that it was necessary to protect the health of a pregnant minor, or to protect the minor's relationship with her parent.

***Vons v. Seabest Foods Inc.*, 14 Cal.4th 434 (1996)** -- In a case arising from an e coli outbreak, the Supreme Court held that the trial court could constitutionally exercise specific jurisdiction over a cross-claim between a meat supplier and certain franchisees. The Court pointed out that the cross-defendants' franchise agreements -- which specified that California law governed disputes -- controlled the purchase of ingredients, training, equipment and cooking procedures. The Court concluded that the cross-claim was sufficiently related to two contracts substantially connected to California -- the franchisees' franchise agreement, and their contract with the meat supplier -- to serve as a basis for jurisdiction.

***Warfield v. Peninsula Golf & Country Club*, 10 Cal.4th 594 (1995)** -- In an action arising from a country club's termination of a woman's country club membership, the Supreme Court held that the Club was a "business establishment" subject to the Unruh Act. The Court emphasized the Club's interaction with the public: (1) the Club regularly permitted nonmembers to rent facilities for a fee; (2) the Club regularly obtained income from fees for the use of its facilities, and the purchase of food and beverages; (3) the Club obtained indirect financial benefit from the regular business transactions with nonmembers conducted on the premises. The Court also rejected the defendant's claim that subjecting the Club to the Unruh Act would violate its members' constitutional right to freedom of association.

***Knight v. Jewett,* 3 Cal.4th 296 (1992)** -- In an action arising from an informal game of touch football, the Supreme Court granted review to determine the proper application of assumption of the risk, if any, following the adoption of comparative negligence. The Court held that the cases in which assumption of the risk had been applied could be divided into two classes: "primary assumption of the risk," referring to cases in which the court concluded that defendant owed plaintiff no duty to protect him from a particular risk; and "secondary assumption of the risk," meaning cases where defendant did owe a duty, but the plaintiff knowingly encountered the risk. The Court held that while "primary assumption of the risk" was still viable under a comparative negligence regime, "secondary assumption of the risk" was merged into the comparative negligence analysis. "Primary assumption of the risk," the Court found, depended not upon the reasonableness of the plaintiff's conduct, but rather on the nature of the activity or sport in which the defendant is engaged, and the relationship of the defendant and the plaintiff to that activity or sport.