

Report

MID-ATLANTIC LEGAL FOUNDATION

OFFICES: 219 EAST 42nd ST./5th FLOOR/NEW YORK, NY 10017/212 557-1350
400 MARKET ST./3rd FLOOR/PHILADELPHIA, PA 19106/215 238-1367

NOVEMBER 1985

Appellate Victory Won in Rutgers Student Fee Case

A major victory has been won for political freedom.

On August 28, 1985 the United States Court of Appeals for the Third Circuit held unconstitutional Rutgers University's system for compelling student support of a political action group.

Mid-Atlantic has represented the plaintiff students in their claim (*Galda v. Rutgers*) that forced funding of the New Jersey Public Interest Group ("NJPIRG") violated their rights to freedom of political thought and association.

NJPIRG is one of over two dozen PIRGs throughout the country, brainchildren of Ralph Nader.

In a 2-1 decision, the Third Circuit found that throughout its existence NJPIRG has fostered a clear political, ideological agenda and that educational benefits accorded to students participating in NJPIRG activities were incidental to those overriding political objectives.

The Court noted that while NJPIRG was politically non-partisan it engaged in "research, lobbying and advocacy for social change." It cited NJPIRG's lobbying activities "for a student assistance act, the Equal Rights Amendment, a nuclear freeze, and the Pinelands Preservation Act."

Prosecution of the suit has been a long and arduous struggle. It was begun in the U.S. District Court for the District of New Jersey in 1979. In 1981, that court first dismissed the suit on summary judgment—namely, on motion without a trial—on the ground that Rutgers' system included a mechanism for dissenting students to obtain a refund.

A year later, in 1982, Mid-Atlantic won reversal of that decision. The Third Circuit held that exactions for a political organization could not be taken even for a moment. It remanded the case for trial under a three part standard: (a) presumptive validity of the University's judgment; (b) to be overcome by Mid-Atlantic showing that NJPIRG functioned essentially as a political action group; and (c) possible rebuttal of Mid-Atlantic's proof by defendants.

In 1984, the District Court held a two week trial and, evaluating both plaintiffs' and defendants' evidence together, held that plaintiffs had not overcome the presumptive validity of the original decision that NJPIRG had sufficient educational benefit to allow its compulsory funding.

By the August decision, Mid-Atlantic again won reversal. In its decision, the Third Circuit unravelled the evidence, and focused on NJPIRG's political essence.

The dissent expressed concern that under the majority's view, review of State universities' educational decisions would be limited only by a "judge's definition of 'political'."

The struggle may not be over. Rutgers and NJPIRG were unsuccessful in obtaining a rehearing by the Third Circuit. However, they were successful in obtaining a stay of the case for 60 days to evaluate asking for U.S. Supreme Court review or to determine a new method for compelling the payments.

Carroll Pretrial Advances

The case of *Carroll v. Blinken*, similar to the *Galda v. Rutgers* suit, involves compelled payment of student activity fees allocated by student governments at various campuses of the State University of New York to the New York Public Interest Research Group.

Remaining discovery in the case has been limited to the conclusion of two fact depositions and depositions of experts. Magistrate Nina Gershon has indicated that she plans to certify the case as ready for trial in the closing days of January 1986.

NJ Plant Closing Bill Defeated

In August, Mid-Atlantic responded positively to the New Jersey Chamber of Commerce request for help in defeating the so-called New Jersey Plant Closing Bill, which the State Legislature had passed and sent to Governor Kean for signature. The Bill contained a number of provisions that created unfair and burdensome obligations for New Jersey corporations.

MATLF urged Governor Kean by letter to veto the Bill. He subsequently vetoed it, giving as his reasons several cited in the letter. Indications are the letter contributed to the formulation of his position.

The Bill would have required a company that planned to close a plant to pay its employees as much as three months severance and to put aside health and insurance benefit payments, irrespective in both instances of the collective bargaining agreement between the company and its employees. It also created an agency that had the power to second guess the

company on reasons for closing the plant and to impose sanctions if it disagreed.

Mid-Atlantic's letter argued that the Bill would have been counterproductive to corporate growth and investment in New Jersey both because of the imposition of monetary costs and its potential for the exposure of the plans of competing companies; would have established another layer of unnecessary, duplicative and costly bureaucracy; and would have been contrary to the trend of labor law cases which have not required bargaining with unions on plant closings.

Efforts Advance to End State Stores in PA

Mid-Atlantic Legal Foundation, which, as previously reported, provided legal representation for a Pennsylvania citizen's testimony against continuation of the Pennsylvania state store system and in favor of a regulated free enterprise system, continues its involvement in the issue. Pennsylvania, one of only two states which totally control wines and spirits' sales, has been considering abolition of the system under the state's "sunset review" process.

In August of 1985, a citizens' coalition was formed, called Pennsylvanians for a Responsible End to the State Store System ("PRESSS"), whose board of directors are Pennsylvania professional men and women. PRESSS' membership list numbers over 2,000 and continues to grow. PRESSS and MATLF, as its legal counsel,

have received significant media mention, both in the printed and electronic media.

As of early November, the Governor stood on record as threatening to veto any vote to reinstate the state store system *in toto*. Litigation is expected to result if there is a veto fight (probably in the context of a challenge to the right of the Governor to veto such legislation) and MATLF's Board, at its October meeting, authorized the Foundation's representation of PRESSS as an intervenor in any litigation. PRESSS, meanwhile, is continuing to pursue efforts in the legislative process to convince the protagonists that a well-regulated private enterprise system can more effectively and responsibly serve the needs of Pennsylvania consumers than the existing state monopoly.

Saller on Public Affairs Advisory Council



Saller

Joining the Foundation's Public Affairs Advisory Council is William Saller, vice president of governmental affairs for the Public Service Electric and Gas Company, Newark, NJ.

Mr. Saller joined the company in 1951 and has served in a number of engineering and management positions at both the divisional and corporate levels. He is a graduate of New Jersey Institute of Technology and Columbia University.

Two New Issues Approved

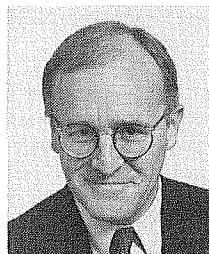
Involvement in two new issues was authorized at the meeting in Pittsburgh on October 29-30 of our Board of Directors, Legal Advisory Council and Public Affairs Advisory Council. The first concerns whether the Pension Benefit Guaranty Corporation ("PBGC") was formed to bail out companies planning to continue in operation from paying their current employee pension obligations. Specifically, was the PBGC designed to pay the approximately \$475 million pension obligation of Wheeling-Pittsburgh Steel Corporation which is presently undergoing reorganization pursuant to Chapter 11 of the Bankruptcy Act. One aspect of the issue is currently being litigated in the Federal District Court for Western Pennsylvania. The Foundation has been asked to come into this matter when it is appropriate.

The second issue concerns whether the Pennsylvania Bituminous Coal Subsidence and Conservation Act is unconstitutional on its face because it causes a taking without compensation and infringes on the right of private parties to contract. The Third Circuit Court of Appeals has upheld the Act and the parties challenging it intend to petition for *certiorari*. We have been asked to file an *amicus* brief in the United States Supreme Court in support of the petition.

Beatty, Smith Elected to Legal Advisory Council



Beatty



Smith

Edward F. Beatty, Jr. and Briscoe R. Smith have been elected to the Foundation's Legal Advisory Council.

Mr. Beatty has been a partner in the firm of Saul, Ewing, Remick and Saul in Philadelphia since 1966 and head of its Real Estate Department since 1972. He is a graduate of Princeton University and the Pennsylvania Law School.

Mr. Smith has been a litigation partner in the New York City firm of Milbank Tweed Hadley & McCloy since 1972. He is a graduate of Williams College, earned his law degree from the University of Virginia and served as law clerk to the Honorable Leonard P. Moore of the U.S. Court of Appeals, Second Circuit.

Blue Route Completion More Likely

In March, 1985 the U.S. District Court in Philadelphia ordered completion of the Blue Route, thereby endorsing the views of those represented by Mid-Atlantic Legal Foundation. Although some of the opponents of the highway dropped out, an appeal was taken to the Third Circuit and argued on September 13. MATLF participated in representing the intervenors, who wished to see the road completed.

On October 4, 1985 the Third Circuit approved the lower court's ruling *per curiam*. Subsequent motions for rehearing *en banc* and a stay of the "go ahead" order were denied by the Third Circuit. Construction is scheduled to resume in December.

Those opposed to construction face a January, 1986 deadline to petition the U.S. Supreme Court to hear their appeal, but they were quoted as acknowledging the futility of trying to get the Court to "unravel" a highway already under construction.