

THE 2018 CLAY AWARDS

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IMMIGRATION

Keker attorneys help get key victory in a fight over immigration, federal funding



CODY HARRIS and DANIEL PURCELL Keker, Van Nest & Peters LLP

County of Santa Clara v. Trump

Lawyers who represented Santa Clara County against President Donald J. Trump's threats to cripple the 'sanctuary jurisdiction' by choking off all federal funding said the suit was really about federalism and the spending powers reserved for Congress.

John Keker of Keker, Van Nest & Peters LLP and Santa Clara County Counsel James Williams were lead counsel on the case.

Before any order was issued, the federal government was already on the retreat, according to Daniel Purcell, a Keker partner in San Francisco who worked as co-counsel with the Santa Clara county counsel's office.

Purcell said the government tried to reinterpret the executive order that threatened to strip all

federal funding from jurisdictions it said did not cooperate with federal immigration officials, arguing that the order only applied to a narrow category of U.S. Department of Justice grants. *County of Santa Clara v. Trump et al.*, 17-CV00574 (N.D. Cal., Feb. 3, 2017).

"The first victory that we won was getting that concession from the government and really narrowing the scope of what the order could do," Purcell said. "It really shifted the playing field from the risk of potentially losing all federal funding to the risk of losing millions of dollars in federal grants but not the punitive action that would cripple a municipality as the executive order initially seemed like it could."

After filing a motion for preliminary injunction in the case, Keker partner Cody Harris said he was genuinely curious to find out how the government would argue that the president had control over federal spending.

"I was really curious to know: What are they going to say? How are they going to respond to this?" Harris said, adding that when the govern-

ment filed its papers it opted not to include any substantive merits arguments, leaving five extra pages in their brief. "They simply left them blank."

The Keker team, along with lawyers from the Santa Clara county counsel's office and their co-plaintiffs from the San Francisco city attorney's office, convinced U.S. District Judge William H. Orrick to issue a nationwide preliminary injunction in the case which, he later made permanent.

Purcell said that despite the government's legal contortions, Orrick read the executive order as it was written and found it unconstitutional. "You don't need to be a lawyer to understand that only Congress has the power of the purse," he said.

While the case is on appeal to the 9th U.S. Circuit Court of Appeals, Harris and Purcell said the major battle was over and the case was now much narrower.

"It's no longer a case about, 'Does the president have the constitutional authority to deprive states and counties of federal funding unless they get in line,'" Harris said. He added that the impact of the ruling would be felt outside of the debate over sanctuary jurisdictions.

"Really, at its heart, it's a case about executive power and what can the president do within the bounds of the Constitution and what can't he do," Harris said. "This was a case right at the heart of that question."

Williams agreed and said the case was about "allowing local communities the space and ability to set their own policies and how they're going to spend their own funds and their own resources."

"This issue happened to be immigration, but you pick whatever issue you care about," Williams said. "In this context, the president was saying, if you don't use your resources to do what I want to help my agents enforce civil federal immigration law, then we're going to ... put you out of business."

Nicholas Goldberg and Edward Bayley from Keker, Van Nest & Peters also worked on the case along with Greta Hansen, Laura Trice, L. Javier Serrano, Danielle Goldstein, Kavita Narayan, Julie Wilensky, Julia Spiegel, and Adriana Benedict from the Santa Clara county counsel's office.

The government's appeal is scheduled for oral arguments in front of the 9th Circuit on April 11.

— Chase DiFelicianantonio