

1990

# Gwen Lorenc v. John Reed Call, in his official capacity as Superintendent of Schools of the Granite School District, and The Board of Education of Cranit School District : Brief in Opposition to Certiorari

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Bruce Plenk; attorney for respondent.

M. Byron Fisher; Fabian & Clendenin; attorneys for petitioner.

---

## Recommended Citation

Legal Brief, *Lorenc v. Call*, No. 900164.00 (Utah Supreme Court, 1990).

[https://digitalcommons.law.byu.edu/byu\\_sc1/2938](https://digitalcommons.law.byu.edu/byu_sc1/2938)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

GWEN LORENC,

Plaintiff/Respondent,

vs.

JOHN REED CALL, in his official  
capacity as Superintendent  
of Schools of the Granite School  
District, and THE BOARD OF  
EDUCATION OF GRANITE SCHOOL  
DISTRICT,

Defendants/Petitioners.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No. 900164

Court of Appeals  
Case No. 890286-CA

---

RESPONDENT LORENC'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

---

UTAH LEGAL SERVICES, INC.  
BY: BRUCE PLENK #2613  
124 South Fourth East, #400  
Salt Lake City, Utah 84111

Attorneys for Respondent

M. Byron Fisher  
FABIAN & CLENDENIN  
215 South State Street  
12th Floor  
P.O. Box 510210  
Salt Lake City, Utah 84151

Attorney for Petitioner

**FILED**

MAY 4 1990

---

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

GWEN LORENC,

Plaintiff/Respondent,

vs.

JOHN REED CALL, in his official  
capacity as Superintendent  
of Schools of the Granite School  
District, and THE BOARD OF  
EDUCATION OF GRANITE SCHOOL  
DISTRICT,

Defendants/Petitioners.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No. 900164

Court of Appeals  
Case No. 890286-CA

---

RESPONDENT LORENC'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

---

UTAH LEGAL SERVICES, INC.  
BY: BRUCE PLENK #2613  
124 South Fourth East, #400  
Salt Lake City, Utah 84111

Attorneys for Respondent

M. Byron Fisher  
FABIAN & CLENDENIN  
215 South State Street  
12th Floor  
P.O. Box 510210  
Salt Lake City, Utah 84151

Attorney for Petitioner

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| TABLE OF CONTENTS . . . . .  | i           |
| TABLE OF AUTHORITIES . . . . .   | ii          |
| ARGUMENT   |             |
| NO SPECIAL OR COMPELLING REASON FAVORS A GRANT OF<br>CERTIORARI IN THIS CASE . . . . . | 1           |
| CONCLUSION . . . . .   | 4           |

## TABLE OF AUTHORITIES

### **CASES**

|   |     |
|---|-----|
| <u>In re Giles</u> , 657 P.2d 285 (Utah 1982) . . . . .   | 2   |
| <u>Kish v. Wright</u> , 562 P.2d 625 (Utah 1977) . . . . .  | 2   |
| <u>Lofft v. State Board of Higher Education</u> , 89 Or. App. 614,<br>750 P.2d 515 (1988) . . . . .                             | 3   |
| <u>Lorenc v. Call</u> , 129 U.A.R. 34 (Utah App. 1990) . . . . .  | 2,3 |
| <u>Maher v. Gagne</u> , 448 U.S.122 (1980) . . . . .  | 2   |
| <u>Smith v. Robinson</u> , 468 U.S.992 (1984) . . . . .   | 2   |
| <u>Texas State Teachers Association v. Garland Independent<br/>School District</u> , 489 U.S. ___, 103 L. Ed. 2d 866 (1989) . . | 3   |

### **STATUTES**

|                           |   |
|---------------------------|---|
| 42 U.S.C. §1983 . . . . . | 2 |
| 42 U.S.C. §1988 . . . . . | 1 |

IN THE SUPREME COURT OF THE STATE OF UTAH

---

GWEN LORENC,

Plaintiff/Respondent,

vs.

JOHN REED CALL, in his official  
capacity as Superintendent  
of Schools of the Granite School  
District and THE BOARD OF  
EDUCATION OF GRANITE SCHOOL  
DISTRICT,

Defendants/Petitioners.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No. 900164

Court of Appeals  
Case No. 890286-CA

---

RESPONDENT LORENC'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

---

ARGUMENT

NO SPECIAL OR COMPELLING REASON FAVORS A  
GRANT OF CERTIORARI IN THIS CASE

Petitioner Call has failed to make any claim as to the applicability of any of the considerations of Rule 46, U.R. App.P. Since subparagraphs (a), (b), and (c) clearly do not apply, the only possible basis for a grant of certiorari is subparagraph (d). Call has not demonstrated how the decision of the Court of Appeals involves an "important question of...federal law" which has not been decided by this Court.

And he simply cannot. On the contrary, the Court of Appeals decision merely follows a long line of federal and state cases granting attorneys fees claims brought pursuant to 42 USC §1988. The present case does not present a fact pattern or particular circumstance which cries out for resolution by this Court at this

time. Rather this area of the law should be allowed to develop in Utah and if and when there is a conflict between decisions of various panels of the Court of Appeals or there is some particularly compelling circumstance, this Court should resolve it then.

Previous rulings of this court on 42 USC §1983 and §1988 cases have followed United States Supreme Court and other federal decisions in interpreting the law. See Kish v. Wright, 562 P.2d 625 (Utah 1977) and In re Giles, 657 P.2d 285 (Utah 1982). The Court of Appeals decision below likewise followed the analysis of such cases as Smith v. Robinson, 468 U.S.992 (1984) and Maher v. Gagne, 448 U.S.122 (1980) and need not be disturbed. See Lorenc v. Call, 129 U.A.R. 34 at 36 (Utah App. 1990).

Call argues that Lorenc is not a prevailing party and is thus not entitled to fees, "because the trial court denied her constitutional claim." It is correct that the trial court denied her constitutional claim as well as all of her other claims in granting summary judgment to Call. Call however ignores the fact that the appellate court reversed the decision of the trial court. The findings of the trial court are no longer of any force or effect. The appellate court, following traditional rules of analysis, felt no need to address Lorenc's constitutional claim as a substantive issue because the case was resolved on other grounds. This cannot and should not be construed as somehow breathing new life into the dead findings of the district court, yet this is what petitioner would have this court believe.

The Court of Appeals properly evaluated the constitutional claims in another context: Lorenc's claim for fees. In this context, the court found Lorenc had asserted a "substantial due process claim" and that her state law claims and the constitutional claims "arose out of a common nucleus of operative fact" 129 U.A.R. at 37, entitling her to fees to be determined upon remand.

Call's argument that somehow different facts were involved in the constitutional and nonconstitutional claims is also specious. Lorenc's argument was a simple one: her rights were violated because Granite School District had a fee waiver policy that excluded her from a waiver because it was more restrictive than state regulations and she could not get a hearing to contest this. Whether evaluating the policy on its face or as applied, her one claim was that the policy was unconstitutional and prohibited by state law and regulations. The appellate court so held.

Call has produced no authority to support his claim that fees should be denied under these circumstances. Two of the cases he cites, in fact, concluded that fees should be awarded because of the close connection between the various claims. See Texas State Teachers Association v. Garland Independent School District, 489 US \_\_\_, 103 L.Ed 2d 866 (1989) and Lofft v. State Board of Higher Education, 89 Or. App. 614, 750 P.2d 515 (1988).

Call's final argument seeks certiorari on the issue of a partial fee waiver. This issue is not so substantial as to demand a grant of certiorari by this Court. The appellate court merely accepted the language of the statute and state regulations



on their face and gave this language its most obvious interpretation--a student is either eligible for a waiver or not.

#### CONCLUSION

Call's petition should be rejected as it raises no serious basis for a grant of certiorari.

DATED this 3<sup>rd</sup> day of May, 1990.

UTAH LEGAL SERVICES, INC.  
Attorneys for Respondent

  
By: BRUCE PLENK

#### CERTIFICATE OF MAILING

I do hereby certify that I mailed four true and correct copies of the foregoing Respondent Lorenc's Brief in Opposition to Petition for Writ of Certiorari to: M. Byron Fisher, Fabian & Clendenin, Twelfth Floor, 215 South State Street, P.O. Box 510210, Salt Lake City, Utah 84151 on this 4<sup>th</sup> day of May, 1990, postage prepaid.

[a:lorenc.res]