

University of Colorado Law School

Colorado Law Scholarly Commons

Colorado Supreme Court Records and Briefs Collection

10-1-1979

Chiappe v. State Personnel Bd.

Follow this and additional works at: <https://scholar.law.colorado.edu/colorado-supreme-court-briefs>

Recommended Citation

"Chiappe v. State Personnel Bd." (1979). *Colorado Supreme Court Records and Briefs Collection*. 296.
<https://scholar.law.colorado.edu/colorado-supreme-court-briefs/296>

This Brief is brought to you for free and open access by Colorado Law Scholarly Commons. It has been accepted for inclusion in Colorado Supreme Court Records and Briefs Collection by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

IN THE SUPREME COURT OF THE
STATE OF COLORADO

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
OCT 4 1979

David W. Bejina

No. 79SA63

SALVADOR CHIAPPE and MICHAEL KAUFMAN,
Plaintiffs-Appellants,

v.

STATE PERSONNEL BOARD and The Members Thereof,
JOHN BARNARD, THORNLEY WOOD, SHELBY HARPER,
RUTH LURIE, LINCOLN BACA; UNIVERSITY OF
COLORADO BOULDER CAMPUS, JAMES SHAEFFER,
ARTHUR INGRAHAM,

Defendants-Appellees.

)
)
)
)
) APPEAL FROM THE
) DISTRICT COURT
) IN AND FOR THE
) COUNTY OF BOULDER
)
)
)
)
)
)
)

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

Jonathon B. Chase
University of Colorado
School of Law
Boulder, Colorado 80309
ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

CITATIONS	ii
ARGUMENT	1
I. CONSIDERATIONS OF STATE CONSTITUTIONAL LAW ARE PROPERLY BEFORE THE COURT	1
CONCLUSION	1

CITATIONS

Robinson v. People in the Interest of Zollinger, 173 Colo.
113, 476 P.2d 262 (1970). 1

I. CONSIDERATIONS OF STATE CONSTITUTIONAL LAW ARE
PROPERLY BEFORE THE COURT.

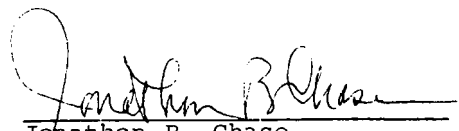
The constitutional protections which the Constitution of the State of Colorado affords its citizens are always important and relevant considerations for this Court in the exercise of its decision-making powers. The Court has held that an issue of constitutional proportions should not be considered merely because it was not formally raised in the trial court. Robinson v. People in the Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970). While there is a line of case law indicating that issues not raised at the trial level may not be first argued on appeal, it is clear that this case has been litigated as a deprivation of constitutional rights from its inception. Thus, to argue that constitutional issues are being raised for the first time on appeal is an argument without substance.

Furthermore, when this case was initially docketed in the Colorado Court of Appeals the Plaintiffs-Appellants included in their Preliminary Statement the state constitutional issues sought to be excluded from consideration by the Defendants-Appellees. A copy of the Preliminary Statement is attached hereto. Defendants had an opportunity to raise their objection at that time, but, instead, chose to not file a preliminary statement.

CONCLUSION

The state constitutional issues interposed by Plaintiffs-Appellants are properly before this Court.

Respectfully submitted,



Jonathon B. Chase
University of Colorado
School of Law
Boulder, CO 80309
Telephone: 492-8428

FOR: AMERICAN CIVIL LIBERTIES
UNION

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I did, on this 28th day of September, 1979, mail a true and correct copy of the foregoing Reply Brief for Plaintiffs-Appellants to:

Ann Sayvetz
Human Resources Section
1525 Sherman Street, 3rd Floor
Denver, CO 80203

by depositing same in a sealed envelope, postage prepaid, in the United States Mail at Boulder, Colorado.

Katherine C. Caldwell

COLORADO COURT OF APPEALS

NO. _____

SALVADOR CHIAPPE, et al.,)
)
 Plaintiff-Appellants,)
)
 v.)
)
 STATE PERSONNEL BOARD AND THE)
 MEMBERS THEREOF, et al.,)
)
 Defendants-Appellees.)

APPELLANT'S PRELIMINARY STATEMENT

TRIAL COURT HISTORY:

COURT: District TRIAL COURT NO.: 77-2257-5
 COUNTY: Boulder JUDGE: Murray Richtel
 DATE OF JUDGMENT OR ORDER: 10/20/78 DATE OF NOTICE OF APPEAL
 FILED: 12/19/78

NAME OF COUNSEL:

Attorney for Appellants:

Attorney for Appellees:

Jonathon B. Chase
 University of Colorado
 School of Law
 Boulder, Colorado 80309
 Phone: 492-8428
 Registration No.: 1980

Ann Sayvetz
 Assistant Attorney General
 Human Resources Section
 1525 Sherman Street, 3rd Floor
 Denver, Colorado 80203
 Phone: 839-3611
 Registration No.: 7314

DISPOSITION IN TRIAL COURT:

Plaintiff's complaint was dismissed with prejudice and judgment entered in favor of defendants.

Relief requested by appellant: Reinstatement of employment,
 lost wages and costs.
 Relief granted: None.

NATURE OF CASE:

Appellants were hired as full time busboys in the food service operation at the University Memorial Center at the University of Colorado at Boulder on September 5, 1974 and October 31, 1974 respectively. At the time appellants were hired each had a beard between one and two inches in length and no mention was made of a "no beard" policy as a condition of employment. Appellants were permitted to continue their employment with their beards with no objection thereto by their employer for close to two years before being suspended and subsequently terminated on June 15, 1976 for failure to shave off their beards. At no time during appellants' employment did their duties include the preparation or handling of food.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

1. Were the plaintiff-appellants denied their substantive due process rights to be free from arbitrary governmental actions as guaranteed by Fourteenth Amendment of the United States Constitution and Article II, Section 25 of the Constitution of Colorado by the defendant-appellees' termination of their employment merely because they chose to wear beards?
2. Are the plaintiff-appellants' interests in wearing beards a constitutionally protected liberty against which any government action which restricts the exercise thereof must be balanced?

3. Were the plaintiff-appellants denied their rights as certified state employees under Article XII, Section 13 of the Constitution of Colorado and C.R.S. 1973, §24-50-125 by defendant-appellees' termination of their employment merely because they chose to wear beards?


RECORD ON APPEAL:

The record on appeal should include items 1, 3, 6 and 7 from the abbreviated record. In addition, the record should include the following document: Court's ruling on defendants' motion to dismiss.

STATEMENT OF POSITION RE: TRANSCRIPT:

No evidence was presented concerning the factual issues in the case; hence, a transcript of evidence is unnecessary to resolve the issues raised on appeal.

Dated this 10th day of January, 1979.


Jonathon B. Chase
University of Colorado
School of Law
Boulder, Colorado 80309