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Constitutional Law—Constitutionality of Waterfront Commission Act Not Impaired by Amendment

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CONSTITUTIONAL LAW

CONSTITUTIONALITY OF WATERFRONT COMMISSION ACT NOT IMPAIRED BY AMENDMENT

Plaintiffs, the International Longshoremen's Association (ILA) and four individual employees of the union, sought declatory judgment that section 8 of the Waterfront Commission Act (W.C.A.) as amended,[1] is unconstitutional on the grounds that it is violative of the due process clause and that its subject matter is pre-empted by federal legislation. The original section 8 was passed in 1953 as a means of implementing a congressionally approved inter-state compact,[2] the purpose of which was the elimination of various evils on the New York waterfront. Section 8 was aimed at ridding the waterfront of criminal influence by prohibiting the collection or receipt of dues by any labor organization representing workers covered by the W.C.A., if an officer of the organization had been convicted of a felony. In 1961 the Waterfront Commission, a creature of the interstate compact, recommended to the legislature that certain amendments to section 8 be enacted to prevent it from being circumvented through various strategems developed by the criminal element.[3] Because of jeopardy to their mutually beneficial employment relationship, plaintiffs challenged those of the 1961 amendments which made section 8 applicable (1) to union employees, as well as officers and agents; (2) to labor organizations which derive their charters from organizations representing covered workers, as well those representing covered workers themselves; and (3) to conviction for certain misdemeanors and specified crimes as well as conviction for felony.[4] The trial court granted defendant Waterfront Commission's motion for summary judgment declaring section 8 as amended, constitutional, and dismissed the complaint.[5] The Appellate Division modified by striking the dismissal and as modified, affirmed.[6] On appeal to the Court of Appeals, *held*, affirmed, one Judge dissenting. The amendments to section 8 of the Waterfront Commission Act, the constitutionality of which is firmly established,[7] do not alter the statute so substantially as to impair its constitutionality under either the supremacy clause of the Constitution or the due process clause of the 14th Amendment. *Bradley*

1. N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1961), as amended by N.Y. Sess. Laws 1961, ch. 211.
2. Interstate Waterfront Commission Compact, N.J.S.A. § 32:23-1-113 (1963); N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1961); approved by Congress 67 Stat. 541 (1953).
3. See the Special Report to the Governors and Legislators of New York and New Jersey summarized at p. 18 Respondents brief.
4. N.Y. Sess. Laws 1961, ch. 211.
5. 30 Misc. 2d 518, 220 N.Y.S.2d 681 (Sup. Ct. 1961).
6. 16 A.D.2d 908, 229 N.Y.S.2d 159 (1st Dep't 1962).
7. DeVeau v. Braisted, 363 U.S. 144 (1960); Linehan v. Waterfront Comm'n, 116 F. Supp. 683 (1953), *aff'd*, 347 U.S. 439 (1954); Staten Island Loaders v. Waterfront Comm'n, 117 F. Supp. 308 (1953), *aff'd*, 347 U.S. 439 (1954); O'Rourke v. Waterfront Comm'n, 118 F. Supp. 236 (1954); Hazelton v. Murray, 21 N.J. 115, 121 A.2d 1 (1956); ILA v. Hogan, 3 Misc. 2d 893, 156 N.Y.S.2d 512 (Sup. Ct. 1956).

v. Waterfront Comm'n, 12 N.Y.2d 276, 189 N.E.2d 601, 239 N.Y.S.2d 97 (1963).

The authority of Congress to exert its legislative will in the field of labor relations is well established as an incident of the commerce power.[8] However, the primacy of Congress in this area does not dictate the absolute exclusion of state legislation.[9] The states are permitted to exercise a wide range of powers concurrently with the federal government, conditional upon the avoidance of conflict.[10] The respective distribution of power in any given area of legislation is entirely within the power of Congress to define,[11] while the interpretation of Congressional declaraction is for the Supreme Court.[12] Whenever it is urged that a state statute must fall because of collision with federal policy, the Supreme Court must decide whether the state law is so repugnant to federal enactment that the two cannot be reconciled.[13] The Court will make every effort to accommodate the state and federal enactments, one to the other, so as to preserve both.[14] It has been held that a state could properly regulate certain labor union activities such as mass picketing, threats, and violence since such conduct was not governed by the National Labor Relations Act.[15] On the other hand, state regulation aimed at limiting employees full freedom to choose their bargaining representatives has been struck down.[16] An important element of the law concerning state power over interstate commerce, and labor relations is the doctrine of congressional consent to state action.[17] The Supreme Court has declared that Congress may "permit the states to regulate the Commerce in a matter which would otherwise not be permissible" or "exclude state regulation of matters of peculiarly local concern which nevertheless affect interstate Commerce."[18]

State regulation of employment and prescription of qualifications for persons seeking to engage in a trade or business have been held to the standard of reasonableness.[19] The due process clause of the 14th Amendment does not

8. NLRB v. Fruehauf Trailer Co., 301 U.S. 49 (1937); NLRB v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937); Associated Press v. NLRB, 301 U.S. 103 (1937); Washington, Va., Md. Coach Co. v. NLRB, 301 U.S. 142 (1937); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

9. Weber v. Anheuser-Busch Inc., 348 U.S. 468 (1955); Atlantic Coastline R.R. Co. v. Georgia, 234 U.S. 280 (1914); Thomas v. Collins, 323 U.S. 516 (1944); Allen-Bradley Local v. Wisconsin Employment Relations Bd. 315 U.S. 740 (1942); Kelly v. Washington, 302 U.S. 1 (1937); Cooley v. Board of Wardens, 53 U.S. (12 How.) 298 (1851).

10. Allen-Bradley Local v. Wisconsin Employment Relations Bd., *supra* note 9; Kelly v. Washington, *supra* note 9.

11. Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

12. *Ibid.*

13. Allen-Bradley Local v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942) and cases cited; Missouri, K. & T.R.R. v. Harris, 234 U.S. 412 (1914); Reid v. Colorado, 187 U.S. 137 (1902).

14. See cases cited note 13 *supra.*

15. Allen-Bradley Local v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942).

16. Hill v. Florida, 325 U.S. 538 (1945).

17. See Dowling, *Interstate Commerce and State Power—Revised Version*, 47 Colum. L. Rev. 547, 552-60 (1947).

18. Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

19. See Shelton v. Tucker, 364 U.S. 479 (1960); Schware v. Board of Bar Examiners

prohibit governmental regulation for the public welfare, but arbitrary or unreasonable regulations will be struck down, and the claim of public interest must be justified.[20] The right to engage in a legitimate trade or business is protected by the Constitution,[21] but the right is not absolute.[22] It is difficult to define the exact boundaries of the state's police power, or how far it may be used to curtail individual liberty, so each case must be carefully evaluated in the light of the particular circumstances.[23]

Plaintiffs in the instant case were faced with the formidable task of distinguishing *DeVeau v. Braisted*.[24] In that case the original section 8 was exposed to a constitutional attack mounted on grounds almost identical to the present claims of pre-emption and violation of due process. Despite the fact that *DeVeau* seems to be exact precedent on the pre-emption issue, the tenuous ground upon which the Supreme Court's decision is based makes it appear vulnerable. In that case the plaintiffs contended that section 8 was in conflict with certain provisions of the National Labor Relations Act and Labor-Management Reporting and Disclosure Act,[25] because it restricted, more narrowly than the applicable federal enactment, the right of employees to bargain collectively through representatives of their own choosing. In support of this contention the plaintiffs cited *Hill v. Florida*[26] where the court declared unconstitutional a Florida statute[27] limiting the freedom of workers to select union representatives, and in doing so, made it quite clear that Congress intended to permit no infringement of any kind on employees rights to select their own representatives.[28] The *DeVeau* Court distinguished *Hill* on the ground that the very important element of "Congressional approval of the heart of the state legislative program explicitly brought to its attention, was not present in that case."[29] The Court further stated that "nor was it true of *Hill v. Florida*, as it is here, that the challenged state legislation was part of a program fully canvassed by Congress through its own investigations, to vindicate a legitimate and compelling state interest, namely, the interest in combatting local crime in-

New Mexico, 353 U.S. 232 (1957); Slochower v. Board of Higher Education of N.Y.C., 350 U.S. 551 (1956); Traux v. Raich, 239 U.S. 33 (1915); United States v. Lovett, 328 U.S. 303 (1946); Nebbia v. New York, 291 U.S. 502 (1934); Hawker v. New York, 170 U.S. 189 (1898).

20. See cases cited note 19 *supra*.

21. New State Ice Co. v. Leibmann, 285 U.S. 262 (1932); Williams v. Standard Oil Co., 278 U.S. 235 (1929).

22. Nebbia v. New York, 291 U.S. 502 (1934); Hawker v. New York, 170 U.S. 189 (1898).

23. See, 16 C.J.S. Constitutional Law § 175(b) (1956) and cases cited.

24. 363 U.S. 144 (1960), noted in 59 Mich. L. Rev. 643 (1961), 46 Minn. L. Rev. 437 (1961).

25. National Labor Relations Act § 7, 61 Stat. 140 (1947), 29 U.S.C. § 157 (1958); Labor-Management Reporting and Disclosure Act, 73 Stat. 536 (1959), 29 U.S.C. § 504(a).

26. Hill v. Florida, 325 U.S. 538 (1945).

27. House Bill No. 142, Laws of Florida, 1943, ch. 21968, F.S.A. § 477.04 (1952).

28. Hill v. Florida, 325 U.S. 538, 541 (1945).

29. De Veau v. Braisted, 363 U.S. 144, 155 (1960).

festing a particular industry."[30] Commenting on this "consent" aspect of the *DeVeau* opinion Professor Paul Hays had this to say:[31]

> [E]ven more interesting is the view, . . . that Congress's consent to the interstate compact in 1953 could affect the interpretation of a statute it had adopted in 1947. Surely congressional consent to the compact, in accordance with article I, section 10, of the Constitution, did not have the effect of amending the National Labor Relations Act. Does the Court suggest, then, that subsequent congressional action, short of the adoption of a statute is effective to put an authoritative interpretatory gloss on previously adopted statutes? Is the intent of Congress in 1953, in another context, relevant to the meaning of a statute adopted in 1947? Or is the Court to be guided by what Congress says in 1953 about the legislative intent of 1947?

In view of the critical importance of the "consent" argument, and because of the inherent weakness thereof, the present plaintiffs urged that the 1961 amendments extending the scope of the W.C.A. could not have been brought to Congressional attention, and therefore the rule of *Hill v. Florida* should apply.[32] The Court of Appeals disposed of plaintiffs' contentions by pointing out that two of the challenged amendments represented no extension of the scope of the W.C.A., since they were enacted to prevent frustration of the original provisions, a type of amendment prospectively consented to by Congress in 1953,[33] and that a provision almost identical to the third amendment was part of the New Jersey implementing acts[34] at the time Congressional approval was given.[35] The Court took a similar view of the plaintiffs' due process objections ruling that *DeVeau* controlled since the amendments did no more than affect the legitimate governmental objectives approved in that case.

Bradley v. Waterfront Comm'n will have little significance on the preemption issue independent of *DeVeau* since the Court of Appeals saw no legal distinction between the two cases. The Court foreswore the more basic grounds for distinguishing *Hill v. Florida* that it had employed in its original opinion[36] in the *DeVeau* litigation, and chose instead to accommodate the "consent" theory of the Supreme Court, to the present circumstances. This choice was dictated by the Supreme Court's status as final arbiter in the area of alleged conflict between state and federal legislation.[37] This leaves still unanswered the question as to the vitality of *Hill v. Florida* in the wake of *DeVeau*. Presumably, since the Supreme Court did not overrule *Hill*, that case will continue to rule out state legislation limiting the right of employees to bargain collectively

30. *Ibid.*
31. Hays, *The Supreme Court and Labor Law October Term, 1959*, 60 Colum. L. Rev. 901, 908 (1960).
32. Appellant's brief pp. 9-10.
33. Instant case at 279, 189 N.E.2d at 602, 239 N.Y.S.2d at 99.
34. N.J. Acts 1953, ch. 202 (S.A. 32: 23-1-113).
35. Instant case at 279, 189 N.E.2d at 602, 239 N.Y.S.2d at 99.
36. 5 N.Y.2d 236, 157 N.E.2d 165, 183 N.Y.S.2d 793 (1959).
37. Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

through representatives of their own choosing, in the absence of Congressional consent. Although *DeVeau* might be part of a growing willingness on the part of the federal courts to permit greater state regulation of labor unions, in the face of growing public concern over abuses. It is the due process aspect of *Bradley* that is significant, if any one is, and disturbing. The Court quotes *DeVeau* for the proposition that the disqualification of convicted "felons" from representing labor unions is a "reasonable means for achieving a legitimate state aim."[38] Then the Court points out that the aim of the present amendment is the same, elimination of corruption from the waterfront, and closes its discussion of the issue. It would appear that only the question of legitimacy of aim is considered—not reasonableness of means. The Court ignores the fact that Justice Frankfurter, writing the opinion in *DeVeau*, expressed concern over the drastic nature of the means employed therein—disqualification of ex-felons; but was able to find support for such measures in comparable federal legislation.[39] The disqualifications of the present statute are even more drastic, and the argument based on comparable federal legislation does not apply, and yet the Court of Appeals gives the matter scant attention in the opinion. One feels that when a court deprives a class of persons of "the right to . . . work . . . the most precious liberty that man possesses,"[40] a careful elaboration of the court's reasoning is warranted. Of course the states have wide powers to deal with interests basic to the well being of their people, they may set standards and requirements for entrance or practice of any field of occupation without elaborate review procedure. However, it is quite another thing to permit the deprivation of a man's livelihood on grounds not related to his fitness for the occupation involved. It is difficult to perceive how conviction for certain misdemeanors involving moral turpitude would be indicative of a man's fitness or lack of it, for employment as union representative. The Court leaves this question in doubt.

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UNCONSTITUTIONALITY OF NEW YORK CITY MINIMUM WAGE LAW—A LIMITATION ON MUNICIPAL HOME RULE POLICE POWERS

In 1960 the New York State Legislature enacted a state-wide minimum wage law covering virtually all occupations.[1] It required an hourly minimum of $1.00 in 1960, $1.15 in 1962, and $1.25 in 1964. For the implementation of the law, the act provided an Industrial Commissioner and Wage Boards empowered to make necessary upward adjustments. In 1962, New York City adopted a similar law requiring minimum hourly rates of $1.25 in 1962, and

38. Instant case at 280, 189 N.E.2d at 603, 239 N.Y.S.2d at 100.
39. De Veau v. Braisted, 363 U.S. 144 (1960).
40. Dissenting opinion of Justice Douglas in Linehan v. Waterfront Comm'r, 116 F. Supp. 683, 684 (1953).

1. N.Y. Labor Law, §§ 550-565.