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Constitutional Law—Validity of Election Law Provision on Eligibility to Nominate

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The Appellate Division would have denied the petitioner relief because he had not exhausted his administrative remedy by applying for a variance, as well as on the constitutional grounds. The Court of Appeals, however, denied the exhaustion ground, but agreed on the constitutional question.[70]

A classification made by a proper zoning agency is a legislative judgment to which a presumption of validity attaches. Therefore, a party attacking such a determination has the burden of showing that that classification was invalid. The nature of this presumption is such that if the validity of the classification is even fairly debatable it will still stand.[71] The property here in question consisted of rolling, partly wooded land in an attractive rural-residential community. Evidence presented by the petitioner admitted that the reasonableness of the regulation was debatable, and this admission coupled with the nature of the area and the property in question caused the Court to hold that petitioner had not made a sufficient showing to overcome the presumption of validity.[72]

Petitioner had subdivided his 127 acres of property into one acre plots and claimed that the amended zoning regulation caused a depreciation in the value of his property and that it thus constituted an uncompensated taking. It has, however, been held that the mere lessening of property value by a classification of this nature does not make that classification unconstitutional.[73] In fact, a classification is not unconstitutional on this ground unless the property can no longer be used for any purpose to which it is adapted.[74] Both the Referee and the Appellate Division in the instant case found that under the two acre limit the property could still be used for purposes to which it was adapted. Thus, petitioner failed to show that the amendment of the Sands Point zoning regulations was an invalid exercise of the power granted to the trustees.

VALIDITY OF ELECTION LAW PROVISION ON ELIGIBILITY TO NOMINATE

Article 1 Section 1 of the New York Constitution states that "No member of this state shall be disfranchised, . . . unless by the law of the land, or the judgment of his peers." The courts have interpreted this provision to include

70. Concerning the exhaustion of remedies the Court indicated that petitioner was not seeking relaxation of the ordinance but determination of its constitutionality and for that reason a variance had no bearing. In addition, a previous case had held that the Board had no power to grant the relief requested under the guise of a variance. See Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284 (1935).

71. Euclid v. Ambler Realty Co., *supra* note 67; Shepard v. Village of Skaneateles, 300 N.Y. 115, 89 N.E.2d 619 (1949).

72. A number of cases have held similar zoning classifications constitutional as they related to rural-residential communities. Dillard v. North Hills, 276 App. Div. 969, 94 N.Y.S.2d 715 (1950) two acres; Flora Realty and Investment Co. v. Ladue, 262 Mo. 1025, 246 S.W.2d 771, *appeal dismissed* 344 U.S. 802 (1952) three acres; Senior v. Zoning Comm'n of New Canaan, 146 Conn. 531, 153 A.2d 415 (1959) four acres; Fischer v. Tp. of Bedminster, 11 N.J. 194, 93 A.2d 378 (1952) five acres.

73. Wulfsohn v. Burden, 241 N.Y. 288, 150 N.E. 120 (1925).

74. Averne Bay Constr. Co. v. Thatcher, 278 N.Y. 222, 15 N.E.2d 587 (1938); Osborn v. East Hampton, — Misc. —, 61 N.Y.S.2d 142, *aff'd* 271 App. Div. 837, 66 N.Y.S.2d 646 (2d Dep't 1925).

not only the right to vote, but also the right to participate in the nomination of candidates.[75] Section 138 subdivision 6 of the New York Election Law is possibly in conflict with the above Constitutional provision as interpreted, in that it provides that the signatures of persons signing an independent nominating petition will *not* be counted *unless* those persons were registered as qualified voters at the last preceding general election. The validity of this statute was attacked on two grounds in *Davis v. Board of Elections of the City of New York*.[76] The petitioner contended that the statute was arbitrary and unreasonable as to voters who had become eligible to vote since the last general election and also as to the signatories in question who had been eligible to vote at that time but had failed to register.

The petitioner's contention concerning first voters was not answered by the Court's *per curiam* opinion because there was no showing that any of the persons who had signed the petition had become eligible to vote since the last election.

The contention that the statute was an arbitrary disfranchisement in regard to the signatories in question was dismissed because the petitioner failed to rebut the presumption of reasonableness attaching to the legislative enactment.[77] In addition, the Court indicated that certain duties as well as rights attach to the franchise to vote, and because the signatories had failed to exercise the franchise in the previous election, the petitioner was estopped from raising the reasonableness of the statute.

Judge Van Voorhis, in his dissent, would have invalidated the entire statutory provision because of the "discrimination" against first voters. The Appellate Division opinion,[78] which was affirmed by the Court, had held the requirements discriminatory as to first voters, but not so where the signatories, as here, had been negligible to vote. This question of the effect toward first voters remains unanswered by the Court of Appeals. It is probable that the provision will be upheld as to first voters as this case has held concerning those who failed to exercise their franchise. The requirements of the statute can be justified as reasonable in light of the administrative problem present.[79]

STATE REGULATION OF UNION OFFICIALS

In *DeVeau v. Braisted*,[80] a union official sought a judgment declaring Section 8 of the Waterfront Commission Act[81] unconstitutional, as being in conflict with Section 7 of the Labor Management Relations Act,[82] and also contending that he was not convicted of a felony within the meaning of Sec-

75. Hopper v. Britt, 204 N.Y. 524, 98 N.E. 86 (1912).
76. 5 N.Y.2d 66, 179 N.Y.S.2d 513 (1958).
77. Lincoln Building Associates v. Barr, 1 N.Y.2d 413, 153 N.Y.S.2d 633 (1956).
78. 6 A.D.2d 390, 178 N.Y.S.2d 465 (1958).
79. See *e.g.*, Ahern v. Elder, 195 N.Y. 493, 88 N.E. 1059 (1909).
80. 5 N.Y.2d 236, 183 N.Y.S.2d 793 (1959).
81. N.Y. SESS. LAWS 1953 c. 887.
82. (TAFT-HARTLEY ACT), 61 Stat. 163 (1947), 29 U.S.C. § 157 (1952); giving employees the right to bargain through representatives of their own choosing.