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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.

tion 8. The Waterfront Act deals with various union abuses on the waterfront and Section 8 specifically prohibits any person from collecting dues for a union if any officer thereof has been convicted of a felony. DeVeau was convicted of grand larceny in 1922 and received a suspended sentence. The trial court rendered a judgment for defendant,[83] (District Attorney), on the pleadings and the Appellate Division affirmed.[84]

The Court of Appeals, in affirming, reasoned that Congress had not manifested any intention, by Section 7 of the Federal Act, to preclude the exercise of the state police power.[85] The Court indicated that the Waterfront Act had been upheld by the United States Supreme Court against constitutional attacks concerning the reasonableness of the correlation between a criminal record and waterfront corruption, vagueness of standards the commissioner was to apply, and deprivation of the right to pursue a calling without due process of law.[86] The question of whether the state may restrict the free choice of union representatives to persons without felony convictions, is disposed of by citing other occupations so restricted.[87] The rationale being, that this is a normal restriction upon occupational qualifications, not an interference with the free choice of bargaining representatives under Section 7 of the Federal Act.

Whether DeVeau's suspended sentence was a conviction within the provisions of the New York Act, was a matter of legislative intent in using the word convicted.[88] This intent is shown by other provisions of the act itself, which use "convicted" to include a person receiving a suspended sentence.[89]

There is little doubt that Congress did not intend to exclude the proper exercise of the state police power by Section 7 of the Labor Management Relations Act. In *Allen Bradley Local v. Wisconsin Board,*[90] the state was allowed to enjoin mass picketing involving violence, threats to workers, and the blocking of public streets. The Supreme Court held this type of labor activity was subject to state control and not pre-empted by the Federal Act. One of the main tests the Supreme Court used in allowing state action in labor areas, was the lack of obvious conflict, actual or potential with the Federal Act.[91]

The crucial question here, is whether this particular provision defeats the intention of Congress to allow employees to choose their own representatives

83. 11 Misc. 2d 661, 166 N.Y.S.2d 751 (Sup. Ct. 1957).
84. 5 A.D.2d 603, 174 N.Y.S.2d 596 (2d Dep't 1958).
85. Auto Workers v. Wisconsin Bd., 336 U.S. 245 (1948); Hotel Employees Union v. Sax Enterprises, 358 U.S. 270 (1958).
86. Linehan v. Waterfront Comm., 347 U.S. 439 (1954).
87. Matter of Sharpiro, 6 A.D.2d 866, 176 N.Y.S.2d 928 (2d Dep't 1958).
88. Richetti v. N.Y. Board of Parole, 300 N.Y. 357, 90 N.E.2d 893 (1950); Weinrib v. Beir, 294 N.Y. 628, 64 N.E.2d 175 (1945).
89. N.Y. WATERFRONT ACT, *supra* note 81, art. V, pt. I.
90. 315 U.S. 740 (1941); see also Algoma Plywood v. Wisconsin, 336 U.S. 301 (1948).
91. Weber v. Anheuser Busch Inc., 348 U.S. 468 (1954); Bus Employees v. Wisconsin Bd., 340 U.S. 348 (1951).

without restriction. *Hill v. Florida*,[92] involved the licensing of union agents, giving the state power to forbid the issuance of such license, for enumerated reasons.[93] This licensing power was held to interfere with the intention of Congress to grant full freedom to employees in choosing union representatives, and to substitute Florida's judgment for that of the workers.

The practical effect of Section 8 of the New York Act, is to require the International Union to dismiss the union representative with a felony record, or function without dues. It is futile to elect one with such a debility, since a dismissal is certain. The Court of Appeals cites no cases allowing states to impose such restrictions on union officials. There is serious doubt that the state may impose such restrictions in the light of *Hill v. Florida*.[94]

The Labor Management Reform Act,[95] passed this year, sets up a comprehensive scheme to exclude convicted felons from union office. It would seem that Congress is now occupying this field, if it has not in the past. This case is presently on the Supreme Court docket, but the significance of any decision will be affected by the new labor bill.

STATE STATUTE PUNISHING WIRE-TAPPING PER SE, NOT PRE-EMPTED

The New York Penal Law, Section 1423(6), provides, that it is a felony to "unlawfully and willfully cut, break, tap or make any connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner, any message, communication, or report passing over it in this state."

The Federal Communications Act, Section 605 provides in part, that "no person not being authorized by the sender shall intercept any communication and divulge or publish the existence . . . of such intercepted communication to any person." A violation of this section is punishable under Section 501 of the same act, by a fine of not more than $10,000, or imprisonment not exceeding one year, or both.

Whether the latter federal provision had pre-empted the New York statute, was seriously questioned in the case of *People v. Broady*,[96] where the Court of Appeals upheld a conviction under Section 1423(6), holding that the validity of that section was unaltered by the federal statute.

Initially, the Court was faced with the contention that the word "willfully," as used in Section 1423(6), must be construed as meaning maliciously or spitefully, and as the jury had not been charged on this element, defendant's conviction was erroneous as a matter of law. If thus construed, reasoned the defendant, the statute would be saved from pre-emption by Section 605, since it would be regarded as a malicious mischief provision, preventing local

92. 325 U.S. 538 (1943).
93. Must be a citizen of the United States for ten years, no felony convictions, and must be a person of good moral character.
94. See also, Hotel Employees Union v. Sax Enterprises, *supra* note 85.
95. PUB. L. No. 86, 86th Cong., 1st Sess. § 504(a).
96. 5 N.Y.2d 500, 186 N.Y.S.2d 230 (1959).