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Constitutional Law--Protected Freedoms and Rights--Enforced Organizational Dues

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to pay his debts in full, and he does not want his reputation to suffer by his becoming known as a bankrupt. Chapter XIII seems to avoid these major pitfalls, and it seems to be a logical and sensible solution to the harassed debtor's problems in the typical case.

Charles Henry Rudolph, Jr.

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Constitutional Law—Protected Freedoms and Rights—Enforced Organization Dues

Two recent decisions of the Supreme Court of the United States present identity of issues which the dissimilarity of aggrieved parties, a group of Georgia railway workers and a Wisconsin lawyer, fails to obscure.

In *International Ass'n of Machinists v. Street*, 81 Sup. Ct. 1784 (1961), the majority of the Court relied on legislative history and the doctrine of avoiding constitutional questions to construe the Railway Labor Act § 2, Eleventh, 64 Stat. 1238 (1951), 45 U.S.C. § 152, Eleventh (1952), as not affording authority to a union to use the employees' dues in financing political causes opposed by them where membership was compelled by a union shop contract. In deciding this case, the justices divided as to whether the constitutional issue was properly avoided. In *Lathrop v. Donohue*, 81 Sup. Ct. 1826 (1961), the Court in a seven to two decision affirmed the judgment of the Wisconsin Supreme Court, holding the integrated bar of that state constitutional, and dismissed the appeal. However, the Court reserved opinion on whether compulsory contribution by a lawyer to an integrated bar, which financially supported political activities opposed by him, was constitutional. The basis of the decision was the failure of the record to present with sufficiency or clarity political activities supported by the state bar which the complainant opposed.

The question of law posed by these two cases and first suggested five years before in *Railway Employees' Dep't v. Hanson*, 351 U.S. 225 (1956), ostensibly remains undecided. The *Hanson* case, like the *Street* case, developed when a group of railway employees contested the constitutionality of the union shop provision of the Railway Labor Act, *supra*, but, unlike the *Street* case, it was brought before the railway workers of the particular state had
joined the union under its provisions, and was dismissed as premature. Thus the question, three times before the Supreme Court, has been avoided as premature, by construction of legislation, and finally as defective in form. Avoidance of the question of constitutionality in these cases, arising on first amendment infringement, does not avoid the issue. In order to practice his livelihood, may an individual be compelled to belong and pay money to an association which financially supports political activities to which he is opposed? The law on the question is unique. The case authority on point is comprised solely of these three cases. A comparison and analysis of the common yet distinguishable characteristics of these cases provides some guidance as to the nature of the right, what in the Court's view constitutes political activities, and the areas from which future litigation on the question is likely to arise.

These actions came to the Court alleging violations of the first, fifth, ninth, and fourteenth amendments of the United States Constitution. The justices were consistently unanimous in peremptorily disposing of any claim to infringement other than the first amendment rights of free speech and freedom of association. The question of freedom of association was then summarily, though not unanimously, discarded on the premise that compulsory membership did not entail compulsory association—the individual was free to associate or not to associate with the group as he pleased. The issue was thus narrowed to one of free speech on the theory that, through compelled monetary contribution to causes supported in opposition to the individual's own views, he amplified the voice of the majority while lessening his own.

The failure of the Lathrop case to satisfy the Court in stating with sufficiency and clarity political views supported by the bar which the complainant opposed and the success in the Street case provide a measure of determining just what constitutes political activities. The record in the Lathrop case disclosed that all political activities complained of, which were financially supported by the Wisconsin State Bar, were in the nature of advocating or opposing legislation regarding administration of justice, court reform and law practice. Nowhere in the record did complainant express his views on any particular legislative issues on which the state bar had taken a view opposite to his own, and in oral argument before the Court he disclaimed necessity for such a showing. In sharp contrast, the record in the Street case contained stipulations that, in addition to
the cost of collective bargaining, substantial portions of dues, fees and assessments of the union were used to extend financial support to candidates for political offices at local, state and national levels. There were further stipulations that there existed, within the union involved, a political league organized for the express purpose of engaging in political activities dealing with election of candidates to public offices, and that this league is supported by direct grants from general funds to meet the expenses of its administration, and miscellaneous expenses such as transporting voters to the polls, preparation and distribution of voting records, sample ballots and various other political literature. In each of these stipulations the complainants recorded their opposition. The Supreme Court concluded that the record squarely presented a constitutional question if the act of Congress authorized collection of dues for such purposes. The complainants had satisfied the Court that the union had engaged in political activities, and but for the exercise of the doctrine of constitutional avoidance the issue might here have been determined.

Political activities, such as those engaged in by the unions, are common to numerous other organizations and associations of a professional nature. Therefore, it would seem, at first blush, that there would be other groups or classes outside the bar and union from which analogous complaints might arise. However, examination of the more obvious ones would indicate that the question is largely confined to the quarters already considered. Doctors, dentists, veterinarians and druggists, though required to obtain a license from the state to attest their competence, are not compelled to join a state or national association in order to practice their professions. Teachers, though required to become members of county or state associations, need make no financial contribution to these associations. The corollary here fails for want of the mandatory association. The free speech issue is lacking. It would seem that if the issue is to be brought back to the Court, it will come from bar or union organizations.

While the division of the justices as to the existence of a constitutional question and the reservation of the Lathrop opinion may encourage opponents of integrated bars throughout the states to test the constitutionality of their creation and existence, the alignment of those justices portends an upholding of the integrated bar in the absence of an extension into activities of a political nature outside the judiciary. The Court there took notice of political activity by
the bar confined to the judicial branch. The premise on which the
majority and those concurring justified the integrated bar ran gen-
erally along the lines that payment of dues to an agency designated
by the state was in the form of an annual license tax for the privilege
of practicing law and within the police powers of the state. An at-
torney is an officer of the court, and, as such, may be called upon
to participate in and support advancement in the administration of
justice, law practice and court reform. If there be some minute
impingement on first amendment rights here it is balanced by the
benefit to the public. The conclusion to be drawn from their ap-
proach is that so long as the integrated bars contain their activities
in politics to the judicial field and make no attempt to encroach
upon the legislative or executive areas, they are unassailable on the
basis urged in Lathrop. It is far more likely that these decisions
will prove of import in labor law. All agreed that there was a con-
stitutional question presented in the Street case. In fact, among
the justices, the only substantial disagreement was over the majority
conclusion that it was unnecessary to decide it. The tenor of the
majority decision and determination in favor of the complainants
infer that a wrong outside the statute was recognized. The Supreme
Court has construed the Railway Labor Act, supra, as prohibiting
the collection of dues from union members to support political
activities to which they are opposed. It seems likely that they will
be implored to determine the constitutionality of other state and
federal statutes applying to the union shop in like respect.

The three cases form a triangle neatly framing their unique
question of law and clearly marking the way for future litigants.
In order to present a cognizable question to the Court as to whether
a statute authorizing compulsory association and contribution to an
association, which financially supports political activities opposed by
the individual, is an infringement on first amendment rights, three
elements appear necessary. The action must be brought by those
who have already been affected by the statute through prior pay-
ment of funds, and those funds must have been used in part to
support the political activity. The record must contain substantial
evidence of political activity beyond that directly designed to further
the advancement of the group, and specific opposition to these po-
litical activities by the individual. The statute challenged must be so
lacking in flexibility that the Court cannot, through exercise of the
doctrine of constitutional avoidance, construe it to prohibit the prac-
tice complained of. When the Court is presented with a question so
framed, the bench, bar and public may anticipate a determination as to whether a constitutional right here exists.

William Erwin Barr

Corporations—Stock Granting Only Limited Power to Vote For Directors Valid Under Constitutional Amendment

Ps, minority stockholders, seek to enjoin defendant corporation from reducing the membership of the board of directors and to require Ds to permit all stockholders to vote for all directors to be elected. Defendant corporation has reduced the number of directors to be elected from eight to three; one director to be elected by preferred stockholders, the remainder to be elected by holders of common stock. Ps claim the charter of defendant corporation allowing stockholders limited power to vote for directors is invalid and in conflict with W. VA. CONST. art. XI, § 4, as amended in 1958. Held, the charter is valid and stock issued with the right to vote for less than the number of directors to be elected is constitutional. Diamond v. Parkersburg-Aetna Corp., 122 S.E.2d 436 (W. Va. 1961).

The controlling question in the case was whether the 1958 Amendment to article XI, section 4 of the constitution effected a change so as to allow preferred stockholders to elect one director and allow common stockholders the exclusive right to elect other directors, as provided by the corporate charter. The amended constitution, with the amended portion italicized, now reads:

"The Legislature shall provide by law that every corporation, other than a banking institution, shall have power to issue one or more classes and series within classes of stock, with or without par value, with full, limited or no voting powers, and with preferences and special rights and qualifications, and that in all elections for directors or managers of incorporated companies, every stockholder holding stock having the right to vote for directors, shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit;