

February 1958

## Constitutional Law--Equal Protection of the Law--State Regulation of Money Order Agencies

D. L. McC.  
*West Virginia University College of Law*

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### Recommended Citation

D. L. McC., *Constitutional Law--Equal Protection of the Law--State Regulation of Money Order Agencies*, 60 W. Va. L. Rev. (1958).

Available at: <https://researchrepository.wvu.edu/wvlr/vol60/iss2/8>

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a conviction, the efficient administration of criminal justice would be seriously impaired. For example, there is no duty upon a prosecutor to present a question to the court which an intelligent and well represented defendant does not see fit to raise in his own behalf. *United States v. Sobell*, 142 F. Supp. 515 (S.D.N.Y. 1956). The evil which the courts should and apparently do attempt to meet is not partisanship per se but deceit and dishonesty. See Comment, 62 HARV. L. REV. 1234 (1949).

There can be no doubt that suppression by the prosecutor of evidence that is favorable to the defendant is a deceitful and dishonest practice, and while the courts look upon such conduct with disfavor and while the Canons of Professional Ethics, *supra*, condemn the practice, no case is found in which a prosecuting attorney has been removed from office or otherwise disciplined on such ground. See 27 C.J.S., *District and Prosecuting Attorneys* § 7 (1941).

In West Virginia a prosecutor may be removed from office for "official misconduct, incompetence, neglect of duty, or gross immorality." W. VA. CONST. art. IV, § 6. W. VA. CODE c. 6, art. 6, § 7 (Michie 1955), provides the procedure for such removal. Although there are no cases so holding, it would seem that in West Virginia, on the basis of the decisions cited herein, if a prosecutor withheld evidence favorable to the defendant, his action would amount to a neglect of his primary duty, *e.g.*, to see that justice is done. There is a strong basis for the belief that his neglect would, in turn, be ground for removal from office.

T. E. P.

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CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAWS—STATE REGULATION OF MONEY ORDER AGENCIES.—The Illinois Community Currency Exchange Act, having as its purpose the protection of the public, required all firms selling or issuing money orders within the state to secure a license and to submit to specified restrictive regulations. The American Express Company, being of unquestionable solvency, was specifically exempted under the act. *P.*, a competing money order agency, contended that the exemption constituted a violation of the equal protection clause of the fourteenth amendment. *Held*, affirming the district court, that the relationship of the statutory classification to the purpose of the act was too remote, and in effect created a closed class favoring a named com-

pany, with accompanying economic advantages to that company, thus depriving *P* of equal protection of the laws. *Morey v. Doud*, 77 Sup. Ct. 1344 (1957) (6-3 decision).

At the time of its adoption, the primary purpose of the equal protection clause of the fourteenth amendment was to protect the Negro in the enjoyment of his newly acquired rights. *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Slaughter House Cases*, 83 U.S. (16 Wall.) 36 (1873). However, the clause has served as authority for the general proposition that a citizen or corporation of a state is entitled to the equal protection of equal laws. *Santa Clara County v. Southern Pac. Ry.*, 118 U.S. 394 (1886); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

This guarantee of equal laws has been raised in numerous cases to question the basis or purpose of legislative classifications, discretionary in nature. See, e.g., *Griffin v. Illinois*, 351 U.S. 958 (1956) (indigency); *Sweatt v. Painter*, 339 U.S. 629 (1950) (color); *Goesuert v. Cleary*, 335 U.S. 464 (1948) (sex); *Hirabayashi v. United States*, 320 U.S. 81 (1943) (race). The difficulty lies in attempting to create and apply uniform rules for implementing this abstract constitutional command. Cf. *Kotch v. River Port Pilot Comm'rs*, 330 U.S. 552 (1947).

As early as 1885, the Court concluded that the fourteenth amendment was not designed to interfere with the police power of the state to prescribe regulations to promote health, peace, morals, education and the general good order of the people. *Barbier v. Connolly*, 113 U.S. 27 (1885). In admitting that all legislation cannot apply equally to all persons, the Court recognized that a great deal of legislation will be of a special nature, applicable only to limited classified groups, and that the effect of this legislation must be to impose special burdens or inequalities upon, or grant special benefits to, certain groups or classes of individuals. Thus there exists a basic contradiction between the constitutional pledge of equal protection of the laws and the legislative right to classify, since the very idea of classification is inequality. Tussman and tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 343-44 (1949).

In the principal case, the legislature saw fit to place all money order agencies in a special classified group imposing certain restrictions upon them, while exempting one named company, the purpose of the classification being the protection of the public from

insolvent companies. Admittedly, such a classification works an inequality resulting in economic discrimination to the regulated companies, but such a result is not necessarily a violation of the equal protection clause. Cf. *International Harvester Co. v. Missouri*, 234 U.S. 199 (1914); *Barrett v. Indiana*, 229 U.S. 26 (1912). The classification is a violation only if it fails to satisfy the reasonable classification test, which poses the question, "Is the classification, in relation to the purpose of the statute, so completely without reason and therefore purely arbitrary, as to constitute an invidious discrimination?" *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1910).

The general rule, particularly in the field of economic classification and regulation, is that a state has wide discretion in its power to classify. *Clark v. Kansas City*, 176 U.S. 114 (1900). The Court has continually refused to question legislative motives and legislative handling of local problems so long as there is some slight relationship between the classification and the object of the legislation. *Railway Express Agency v. New York*, 336 U.S. 106 (1948); *New York Rapid Transit Co. v. New York*, 303 U.S. 573 (1938); *Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422 (1935).

Although the majority of the Court in the principal case found the Illinois statute to be unreasonable and invidiously discriminatory, there are a wealth of decisions, in the field of economic regulation, which would seem to support the dissenting opinions of Justices Black and Frankfurter.

In *Barrett v. Indiana*, 229 U.S. 26 (1912), the Court upheld a state statute singling out bituminous coal mines and omitting block coal mines when requiring mine entries to be of not less than prescribed width. Mr. Justice Day pointed out that although the equal protection clause requires laws of like application to all similarly situated, still if in the judgment of the legislature a distinction is to be made, then the classification must stand, unless the Court can say that there is absolutely no fair reason for its existence.

An Oklahoma statute making it unlawful for opticians not licensed as optometrists to fit lenses in frames, while specifically exempting sellers of ready-to-wear glasses, has been held valid. *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). The Court here recognized that it cannot possibly have the understanding of purely local problems which a state legislature will have. Since the

legislature must have felt that the two branches of the optical business presented distinct regulatory problems, the presumption is that the basis for the classification is reasonable. *Cf. Goesaert v. Cleary, supra.*

A Texas statute, having as its purpose the promotion of free enterprise, forbade various forms of combinations and monopolies, but expressly exempted corresponding agricultural activities. Holding the statute valid, Mr. Justice Frankfurter, speaking for a near unanimous Court, expressed the policy which the Court has most consistently followed during the past two decades:

“The equality at which the Equal Protection Clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the equal protection of the laws and laws are not abstract propositions. They do not relate to abstract units, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in *fact* or *opinion* to be treated in law as though they were the same. *Tigner v. Texas*, 310 U.S. 141, 147 (1939). (Emphasis added.)

In the opinion of the Illinois legislature, the American Express Company did not possess the dangerous characteristics at which the statute was aimed. Should such material characteristics as solvency, size, dependability and general scope of operations be considered, it might be contended that the exempted company was so different from the regulated companies as to constitute in fact a dissimilar institution. If the question of equal protection is to be decided on practical considerations based on experience rather than by theoretical inconsistencies, the classification conceived by the Illinois legislature would not appear to be completely without reason. *Railway Express Agency v. New York, supra; cf. Goesaert v. Cleary, supra.*

Had the legislature applied an indirect approach in exempting the American Express Company, such as a classification based on size or corporate net worth, it is conceivable that the statute would have withstood the reasonable classification test. *Cf. Miller v. Strahl*, 239 U.S. 426 (1915); *Engel v. O'Malley*, 219 U.S. 128 (1911).

The decision in the principal case would bear out the assumption that a statute directly exempting by name a given corporation from a particular classification will be closely examined by the Court for a possible violation of the equal protection clause.

D. L. McC.