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Organizer's Right to Speak

LABOR LAW

ORGANIZER'S RIGHT TO SPEAK

Appellant, a labor union president, in violation of a restraining order issued by a Texas District Court pursuant to a Texas statute[1] requiring labor union organizers to file a written request for an organizer's card before soliciting members for the union, addressed an audience of oil workers. The meeting was part of a campaign to organize the employees of an oil plant under the Oil Workers Indus-

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11. Benefit Assn. of Ry. Employees v. Armbruster, 217 Ala. 282, 116 So. 164, 166 (1928); Standard Acc. Ins. Co. v. Hoehn, 215 Ala. 109, 110 So. 7, 9 (1926); Note (1927) 25 Mich. L. Rev. 803.
12. Continental Casualty Co. v. Lloyd, 165 Ind. 52, 59, 60, 73 N.E. 824, 826 (1905); Inter-Ocean Cas. Co. v. Wilkins, 96 Ind. App. 231, 249, 250, 182 N.E. 252, 258 (1932); Kokomo Life and Accident Co. v. Walford, 90 Ind. App. 395, 400, 167 N.E. 156, 157, 158 (1929); Note (1930) 5 Ind. Law J. 298.
13. Leland v. Order of United Commercial Travelers of America, 233 Mass 558, 564, 124 N.E. 517, 520 (1919); Silverstein v. Metropolitan Life Ins. Co., 254 N.Y. 81, 84, 85, 171 N.E. 914, 915 (1930).
14. See note 12 supra.
15. Policeman & Fireman's Ins. Assoc. v. Blunk, 107 Ind. App. 279, 287, 288, 20 N.E. (2d) 660 (1939); Railway Mail Assn. v. Schrader, 107 Ind. App. 235, 242, 19 N.E. (2d) 887, 889, 890 (1939).

1. Tex. Stat. (Vernon Supp. 1943) Art. 5154, Sec. 5.

trial Union. Appellant invited all present to join and orally solicited one employee. Held, guilty of contempt of court. Petition for a writ of habeus corpus, denied.[2] Held, reversed. The statute as applied imposed a previous restraint upon appellant's rights of free speech and assembly. *Thomas v. Collins*, —— U.S. ——, 65 Sup. Ct. 315 (1944). The court applied the "clear and present danger" test,[3] denying validity to the application of the "reasonable basis" test,[4] relied upon by appellee.

A state may not, in imposing a licensing requirement upon the soliciting of funds, vest discretion of issuance in the issuing authorities.[5] But the Supreme Court has indicated that a statute merely requiring previous identification of solicitors would be upheld upon the showing of a social interest sufficient to justify the invocation of the state's police power.[6] Labor unions, like any other groups, are subject to regulation by the states acting within the scope of their police power.[7] Nor does the fact that the Federal Government has legislated[8] on the subject under the commerce clause of the Constitution exclude the exercise of the power.[9] Regulation of matters of local concern and within the states' police power which unavoidably involves some regulation of interstate commerce, but which, because of local character, can not be effectively dealth with by Congress, has been left to the states.[10] Though Congress, under the commerce clause, may pre-empt

2. Ex Parte Thomas, 141 Tex. 591, 174 S. W. (2d) 961 (1943).
3. Bridges v. California, 314 U.S. 252 (1941); Schenck v. United States, 249 U.S. 47; see Mr. Justice Holmes dissenting in Gitlow v. New York, 268 U.S. 652, 672 (1923) and in Abrams v. United States, 250 U.S. 616, 624 (1919).
4. California v. Thompson, 313 U.S. 109 (1941); Clark v. Paul Gray, Inc., 306 U.S. 583 (1939); Hendrick v. Maryland, 253 U.S. 610 (1914). Appellee urged a standard analogous to that applied under the commerce clause to sustain state statutes regulating transportation.
5. Largent v. Texas, 318 U.S. 418 (1943); Schneider v. State, 308 U.S. 147 (1939).
6. People of State of New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 72 (1928); see Cantwell v. Connecticut, 310 U.S. 296 (1940) at p. 305. "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." The Court in the principal case found that the invitations to membership were inseperably interwoven into the speech and that therefore the First Amendment would apply. The dissenting opinion, however, found no difficulty in calling the transaction "solicitation," thus rendering the application of the statute constitutional.
7. See Allen Bradley Local no. 1111, United Electrical, Radio & Machine Workers of America v. Wisconsin Employment Relations Board, 315 U.S. 740 (1942).
8. National Labor Relations Act, 29 USCA, §§ 151 et seq. (1935)
9. Wisconsin Labor Relations Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N.W. 673 (1938).
10. Cooley v. Board of Port Wardens, 12 How. 299 (1851); Willson v Black Bird Marsh Creek Co., 2 Pet. 245 (1829).

the field, the intention to exclude the states from exercising their police power must be clearly manifested.[11]

The decision in the instant case rests on the theory that lawful public meetings which do not immediately threaten social interests entitled to state protection are not such as to require previous identification of the speakers. The Court, in invoking the "clear and present danger" test, confined its decision to the question of free speech and assembly. It carefully avoided passing on the more troublesome problem of state control of solicitation, which necessarily enters either directly or indirectly, into all meetings of labor groups. If it is beyond the orbit of state control, the situation presents an anomoly in light of the "street soliciting" cases[12] unless the National Labor Relations Act may be said to preclude state action. If solicitation by union organizers may be subject to state control, the decision of the Thomas case by no means makes certain at what point speaking favorably to unionism ends and solicitation begins.

11. See Kelley v. Washington, 302 U.S. 1, 10 (1937); Mintz v. Baldwin, 289 U.S. 346 (1933).

12. Cox v. New Hampshire, 312 U.S. 569 (1942); City of Manchester v. Leiby, 117 F. (2d) 661 (1941); See Cantwell v. Connecticut, 310 U.S. 296 (1940), cited supra note 6.