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Constitutional Law - Right of a State Legislature to Require Observance of a Day of Rest

R. B. Frazier

CONSTITUTIONAL LAW

Right of a State Legislature to Require Observance of a Day of Rest

May a State enact legislation providing for a day of rest to prevent the physical and moral debasement which comes from uninterrupted labor? The Virginia Supreme Court of Appeals recently answered the question affirmatively.[1] The court further held that classifications contained in the amended law, of products prohibited and permitted to be sold and work prohibited and permitted to be done on Sunday were not arbitrary and unreasonable and did not constitute special legislation, nor did it deprive those affected of equal protection under the laws.[2]

Several questions placed before the court brought about determination as to the following points:

1. Was the Recodification Act effective to repeal the amended Sunday law?[3]

2. Does the Sunday law impair the religious freedom guaranteed by the Federal and State Constitutions?

3. Are the "exclusions" in the amended Sunday law so discriminatory and arbitrary as to violate the requirement of equal protection of the laws?

In the principal case, five merchants operating retail grocery stores in Richmond, Virginia brought an action seek-

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[1] Mandell v. Haddon, 202 Va. 979, 121 S.E.2d 516 (1961).

[2] *Id.* at 989; *Accord,* Joy v. Green, 194 Va. 1003, 76 S.E.2d 178 (1953); County Board of Supervisors v. American Trailer Co., 193 Va. 72, 68 S.E.2d 115 (1951); Martin v. Commonwealth, 126 Va. 603, 102 S.E. 77 (1920).

[3] VA. CODE ANN. § 18.1-358 (1950) (1960 Repl. Vol.) Working or transacting business on Sunday—

In general, the amended act prohibits the transacting of business, engaging in labor, etc., except in household or other works of necessity or charity. It enumerates the types of acts which are definitely within the prohibitions of the statute; in effect those which would be promotive of labor and business transactions. It also lists the exclusions to which the act does not apply, including, *inter alia,* the sale of magazines, motor fuels, film, and the sale of athletic and recreational equipment on the premises where used.

ing a declaratory judgment to enjoin the city's Commonwealth Attorney from enforcing the provisions of the amended Virginia Sunday law. They contended that specific provisions of the law were in direct violation of the Fourteenth Amendment, and contrary to the First and Fourth Articles of the Constitution of Virginia.[4] Further, the appellants contended that because of a procedural error[5] committed by the General Assembly, the Sunday law as amended in 1960 was repealed on the fourth day following its effective date.

In response to the merchants' allegation that certain provisions of the law were in direct violation of the equal protection clause of the Fourteenth Amendment, specifically that exclusion in the act which permits sales of athletic and recreational equipment on the premises where used, the Virginia Supreme Court of Appeals cited three cases recently decided by the Supreme Court of the United States,[6] and held that such provisions were not unconstitutional. The appellants

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[4] § 16 "Religious Freedom.—That religion or the duty which we owe to our creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence and, therefore, according to the dictates of conscience and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other."

Art. IV § 58: "Prohibitions on General Assembly as to suspension of writ of habeas corpus, and enactment of laws referring to religion and other laws ". . . No man shall be compelled to frequent or support any religious worship, place or ministry, whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinion or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect, their civil capacities . . ."

§ 63 Powers of the General Assembly and limitations thereon—". . . The General Assembly shall not enact any local or private law in the following cases . . . 18. Granting to any private corporation, association, or individual any special or exclusive right, privilege or immunity . . ."

[5] Va. Acts of Assembly (1960) Ch. 358 Preamble. In effect, the General Assembly on the first day of the 1960 session received a bill containing a clause expressly repealing Title 18 as preliminary to its recodification. The bill was approved and became effective July 1, 1960. Some two weeks later, a bill amending the Sunday law, which was a part of Title 18, was passed without dissenting vote also. The later bill was to take effect June 27, 1960. Thus it appears that the bill was repealed four days after taking effect, or on July 1, 1960, by the repealer bill. The merchants, however, conceded that this was not the intent of the legislature, and the court effectively disposed of the procedural question. See also *supra* note 1 at 985 for clarification.

[6] McGowan v. Maryland, 366 U.S. 420 (1961); Braunfeld v. Brown, 366 U.S. 599 (1961); Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961).

urged that the exclusions were unreasonably discriminatory and were a denial of equal protection to those vendors who did not qualify for such exclusions. In the words of the court,

> This contention is without merit. The equal protection clause of the Fourteenth Amendment does not deprive States of the power to make reasonable classification in adopting police laws, provided the classification is based on some real and substantial relation to the objects sought to be accomplished by the legislation . . .[7]

The court further stated that the exclusions actually applied to all who were similarly situated or engaged in the same type of business, without any discrimination, and held that since the exclusions were not unreasonably discriminatory, they were not unconstitutional.[8]

Seemingly one of the stronger contentions of the appellants was that the Sunday law was a violation of the religious freedom guaranteed by both the Federal and State Constitutions. To this the court replied that although the first Sunday laws were motivated by religious forces, even imposing fines for failure to attend church,[9] ". . . they can no longer be considered as retaining any semblance of religious character."[10] Rather, they are ". . . enacted under the police power[11] of the state for the purpose of providing a day of rest for persons, to prevent the physical and moral debasement which comes from uninterrupted labor . . ."[12] and thus they do not change

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[7] Mandell v. Haddon, *supra* note 1 at 992.

[8] *Ibid.*

[9] 1 HEN. VA. STAT. 123 (1823).

[10] Mandell v. Haddon, *supra* note 1 at 987.

[11] McGowan v. Maryland, *supra* note 6 at 508. "Every other appellate court (except California) that has considered the question (of constitutionality on the basis of religious freedoms, etc.) has found the statutes supportable as civil regulations and not repugnant to religious freedom." *See also* cases cited at 508, 509 for numerous cases in support.

[12] *Supra* note 1 at 988.

the secular character of the law to one of a religious nature.[13]

Further, the merchants contended that the General Assembly cannot define "works of necessity" because the term is an elastic one ". . . to be defined in the light of the age in which we live, and that it might be considered differently in different communities of the State."[14] The response of the court was that since neither the old law nor the amended one fixed a standard specifically, the test was to be left to the jury to decide just as is always done in instances where reasonable men cannot agree as to a particular set of facts.[15] It is at least arguable, however, that the question of "due process" was not specifically determined by the court. The clause which specifies "works of necessity" does not actually appear to furnish a definite guide by which merchants may govern their actions. It would seem that there is no readily ascertainable standard of guilt, and that one has no way of knowing in many instances just when he is in fact breaking the law. It would seem clearly a violation of the due process clause of the Constitution, although the question was not specifically litigated. The court did make reference to *Pirkey Bros.* v. *Commonwealth*,[16] which answers the question somewhat, though not entirely satisfactorily, as follows: Such a lack of guidance is true of all questions of fact, ". . . and is especially noticeable in criminal cases and cases involving the question of negligence . . ." and further that the burden of proving guilt is on the accuser.

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[13] *Ibid; Accord,* McGowan v. Maryland, *supra* note 6; Gallagher v. Crown Kosher Super Market of Mass., 366 U.S. 617 (1961) upholding the principle that a law providing a day of rest does not infringe upon the constitutional guarantee of religious freedom provided under the First Amendment and made applicable to the states by the Fourteenth Amendment. *See also,* Braunfeld v. Brown, *supra* note 6; Two Guys from Harrison-Allentown, Inc., v. McGinley, *supra* note 6; Pirkey Bros. v. Commonwealth, 134 Va. 713, 114 S.E. 764 (1922); Rich v. Commonwealth, 198 Va. 445, 94 S.E.2d 549 (1956); 50 AM. JUR., *Sundays and Holidays,* § 5 at 803-804 (1938).

[14] Mandell v. Haddon, *supra* note 1 at 991. *But see,* 30 U.S. L. WEEK 1147 (U.S. March 20, 1962) in which a Kansas court is reported to have held such a statute void on account of vagueness.

[15] *Id.* at 991-992; *Accord,* Pirkey Bros. v. Commonwealth, *supra* note 13; Rich v. Commonwealth, *supra* note 13.

[16] 134 Va. 713, 726-727, 114 S.E.2d 764 (1922).

Having reversed the lower court on the question of the constitutionality of the provision concerning exclusions, the Virginia Supreme Court of Appeals denied the declaratory judgment sought by the merchants.

It now appears that the Sunday law is to bear the full support of the judicial branch of both the Federal and State governments, and that until the law is amended or repealed by further acts of the General Assembly, it is to be in full effect.

It does seem, however, that in so far as the question of "due process" was not completely litigated, the principle case should not be binding on the courts in a future litigation of the subject, which in view of the strong opposition to the law, may be soon forthcoming.

R. B. F.