Maryland Law Review

Volume 22 | Issue 4 Article 7

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David S. Cordish, *Interpretation Of Statutes To Avoid Constitutional Questions Re Labor Union Political Contributions - Machinists v. Street*, 22 Md. L. Rev. 348 (1962)
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Interpretation Of Statutes To Avoid Constitutional Questions Re Labor Union Political Contributions

Machinists v. Street[1]

A number of railroad carriers had begun work under a union shop contract as authorized by a 1951 amendment, Section 2 Eleventh of the Railway Labor Act.[2] Under the agreements with the union, every employee of the railroad was required to pay, as a condition of continued employment, all assessments and dues that were normally required of union members of his particular class or trade.

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[1] 367 U.S. 740 (1961).

[2] 64 STAT. 1238, 45 U.S.C.A. § 152 Eleventh (1951). This section provides for a *permissive* union shop, and was held constitutional on its face in Railway Employees' Dept. v. Hanson, 351 U.S. 225 (1956) on the grounds it (a) was a legitimate exercise of Congress' power to regulate interstate commerce and (b) did not violate the First Amendment or the due process clause of the Fifth Amendment.

Appellees brought an action to enjoin the enforcement of the union shop provision of the amendment. They claimed that the dues they were compelled to pay in order to retain their jobs were being used to foster political causes to which they were opposed. The state trial court, finding it impossible to separate the money spent for political purposes and that spent for collective bargaining, concluded that the combination of the collection of respondent's dues, the union shop agreement and its enforcement, and Section 2 Eleventh of the Railway Labor Act violated First, Fifth, Ninth, and Tenth Amendment guarantees from unwarranted invasion of personal and property rights,[3] and granted the injunction sought. The Supreme Court of Georgia affirmed, considering the constitutional question to be whether the First Amendment's freedom of speech guarantee and the Fifth Amendment's due process clause were violated.[4] In reversing, the Supreme Court of the United States, not reaching the constitutional issues, held that the section of the Railway Labor Act authorizing a union shop does not empower a union, over an employee's objection, to use his exacted funds to support political causes which he opposes. It thus avoided deciding the constitutional issues raised.

The Supreme Court has developed seven self-imposed limitations by which it has avoided ruling upon constitutional questions confessedly within its jurisdiction.[5] The seventh and final of these restraints relates to statutory interpretation and was expressed by Mr. Justice Brandeis as follows:

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[3] *Supra*, n. 1, 745, n. 3.

[4] International Association of Machinists v. Street, 215 Ga. 27, 44-45, 108 S.E. 2d 796, 807 (1959); and see *supra*, n. 1, 746, n. 4.

[5] See Ashwander v. Valley Authority, 297 U.S. 288, 346-348 (1936) (concurring opinion) for Justice Brandeis's formulation of the first six of these limitations or rules. The Court will not (1) pass upon the constitutionality of legislation in a friendly, non-adversary, proceeding. Chicago & Grand Trunk Ry. v. Wellman, 143 U.S. 339, 345; (2) "anticipate a question of constitutional law in advance of the necessity of deciding it". Liverpool, N.Y. & P.S.S. Co. v. Emigration Commissioners, 113 U.S. 33, 39 (1885); (3) will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied". Liverpool, N.Y. & P.S.S. Co. v. Emigration Commissioners, *supra;* (4) pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. Light v. United States, 220 U.S. 523, 538 (1911); (5) pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Hendrick v. Maryland, 235 U.S. 610, 621 (1915); (6) pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581 (1888).

> "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[6]

This note presents (1) a brief discussion of the basis and underlying philosophy for the doctrine; (2) a consideration of the major factors which have traditionally determined its application in a particular situation; and (3) a detailed analysis (through illustrations) of the manner in which the Supreme Court has applied the doctrine in cases concerning the spending of general union funds for political purposes.

The philosophical basis for the constitutional avoidance doctrine is found in a presumption that, in the absence of clear language or reasonably unambiguous legislative history to the contrary, Congress did not intend to overstep its constitutional limitations.[7] The presumption is based on the theory that Congress never intentionally passes a statute which it believes will be held invalid.[8]

The major factors or limitations which have traditionally determined the application of the self-imposed restraint doctrine in a particular situation are: (1) the ordinary usage and plain meaning of the words of a statute, and (2) the contemporary importance of the constitutional

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[6] This statement of the principle originally appeared in Crowell v. Benson, 285 U.S. 22, 62 (1932) (per Hughes, C.J.). It was discussed by Justice Frankfurter in his concurring opinion in United States v. C.I.O., 335 U.S. 106, 126 (1948) where he compares the principle to the "case and controversy" rule, while admitting that the defect is not jurisdictional. Possibly a better approach would be simply to consider the principle as part of the broader "doctrine of necessity."

[7] It is important to separate this doctrine of seeking a construction which avoids constitutional doubts from the "presumption of constitutionality" doctrine. The latter device places the burden of establishing unconstitutionality upon the party attacking the statute. This serves as an aid in upholding the validity of legislation when a decision on its constitutionality has become necessary, while the doctrine under study in this note is designed to avoid its necessity.

[8] Additional support for the presumption can be found in the fact that a large percentage of our lawmakers are legally trained and thus should be aware of constitutional bounds. *(e.g.* one-half of the members of the 81st Congress were legally trained, U.S. News, Nov. 26, 1948, p. 11). However, on a case-by-case basis the approach modified by the above fact is easily discredited as a general proposition. The legislators may (1) simply not be aware that a constitutional problem is involved, (2) have cognizance that a constitutional question is involved but have decided it incorrectly, or (3) feel that the constitutionality is better left to the courts. See Bernard, *Avoidance of Constitutional Issues in the United States Supreme Court: Liberties of the First Amendment*, 50 Mich L. Rev. 261, 288 (1951).

objection. Concerning the first of these elements, due to the Court's ever-changing view of its proper function in construing acts of the legislature, its approach has fluctuated widely.[9] On one extreme, there is the line of reasoning adopted in *Richmond Co. v. United States*,[10] that "it is our *duty* in the interpretation of federal statutes to reach a conclusion which will avoid serious doubts of their constitutionality."[11] This kind of reasoning has frequently given way to the opposite approach as expressed in *United States v. Reese et al.*[12] In that case, which exerted a great deal of influence on subsequent decisions,[13] the Court stated that it was without power to give a narrow construction to an overly broad statute as this would infringe on the domain of the legislature.[14]

Unlike the first, the Court acts with some consistency in avoiding constitutional issues when the second element, the importance of the constitutional objection, is present. While the cases decided do not lend themselves to a concrete formula whereby it is possible to predict whether the Court will apply or reject the principle in a particular instance, there is a clearly ascertainable overall trend. The stronger the constitutional doubt, the greater the likelihood that the Court will adopt a construction that avoids this doubt, and also the stronger the possibility that they will

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[9] See Justice Frankfurter's dissent in Shapiro v. U.S., 335 U.S. 1, 36-70 (1948).

[10] 275 U.S. 331 (1928).

[11] *Id.*, 346. Emphasis supplied. Some of the leading cases using a similar type of approach *(i.e.*, straining the ordinary meaning of the words of an act to avoid constitutional doubts) are the following: Labor Board v. Jones & Laughlin, 301 U.S. 1 (1937); United States v. Jin Fuey Moy, 241 U.S. 394 (1916); United States v. Delaware & Hudson Co., 213 U.S. 366 (1909). Two more examples of the extreme to which the Supreme Court has gone can be seen in The Abby Dodge, 223 U.S. 166 (1921), where the words "sponges taken . . . from the waters of the Gulf of Mexico" were construed to exclude sponges taken from the Gulf but within the territorial jurisdiction of a state; and the case United States v. Walter, 263 U.S. 14 (1923), where the phrase "any corporation in which the United States of America is a stockholder" included only such corporations as are instrumentalities of the government.

[12] 92 U.S. 214 (1875).

[13] Some of the leading cases following the approach of United States v. Reese et al., *id.*, are: United States v. Sullivan, 332 U.S. 689 (1948); Bowman v. Continental Oil Co., 256 U.S. 642 (1921); Butts v. Merchants Transp'n Co., 230 U.S. 126 (1913); United States v. Harris, 106 U.S. 629 (1882).

[14] Thus it can be seen that in applying this self-imposed restraint, the Court is not bound by any specific constitutional or statutory commands, and thus is left largely to its own discretion, which fluctuates in response to the temperament of the individual justices, the facts and circumstances attending the particular case, and other variables.

:depart from the normal usage and meaning of the language :of the statute.[15]

This has been especially true in cases involving First Amendment freedoms. Here the Court has consistently avoided a construction which would leave the legislation open to serious questions of constitutionality.[16] This trend or attitude is exemplified in the Court's treatment of cases concerning the use of union dues to espouse political causes.

The instant case is an excellent illustration of the extreme to which the Court will go in avoiding First Amendment questions.[17] By finding a dual intent of Congress in passing the 1951 Amendment to the Railway Labor Act,[18] the majority of the Court avoided the constitutional issues raised by the Georgia Supreme Court.[19] Justice Brennan, for the majority, said Congress' first purpose was to enable the union and employer to force certain non-union employees, who enjoyed the rewards of the union's bargaining efforts, to contribute to "legitimate" collective bargaining, which, by law, must be conducted equally for all employees.[20] The second objective was to safeguard the rights of dissent by withdrawing from the unions a means of forcing employees to support political causes which they openly oppose.[21] It is this second objective that has been most severely attacked by those critical of the majority opinion.[22]

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[15] For the lawyer the use of the principle that statutes be construed to avoid constitutional doubts raises a difficult procedural question. Due to the dual aspect of the principle, i.e., the statutory interpretation area and the constitutional decision, the lawyer may be compelled to meet the normal Court requirements for properly raising and preserving constitutional objections in the lower courts. In cases where counsel has argued, because of the principle, that the statute is inapplicable, and if it is, it is unconstitutional — the Court has not given a direct answer. However, cases dealing with the problem indicate the Court probably will overlook procedural shortcomings. See Linder v. United States, 268 U.S. 5 (1925) where, in spite of respondent's failure to point out the threatened constitutional objection in the lower court, the Supreme Court accepted his construction to avoid the constitutional doubt and made no mention of the procedural defect. This same type of defect was ignored in Shapiro v. United States, 335 U.S. 1, 32 (1948) and in U.S. v. Jin Fuey Moy, 241 U.S. 394 (1916).

[16] See Dennis v. United States, 341 U.S. 494, 501 (1951). "[I]t is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution." Three cases in the 1961 term of the Court also serve as excellent examples: Communist Party v. Control Board, 367 U.S. 1 (1961); Scales v. United States, 367 U.S. 203 (1961); Machinists v. Street, *supra*, n. 1.

[17] *Supra*, n. 1.

[18] *Supra*, n. 2.

[19] Violation of First, Fifth, Ninth, and Tenth Amendment guarantees from unwarranted invasion of personal and property rights.

[20] 367 U.S. 740, 750-764 (1961).

[21] *Id.*, 765-770.

[22] Justice Black dissenting: "The very legislative history relied on by the Court appears to me to prove that its interpretation of § 2, Eleventh is

The Court in its reasoning begins with an assertion of the seventh of Justice Brandeis's principles of constitutional avoidance.[23] It then finds that the union's argument that the cost of "collective bargaining" should be shared by all who receive its benefits, was the controlling consideration with the legislature.[24] As to why this argument was decisive the Court points out only that it had been advanced by the unions and, without mentioning any of the other union arguments, the Court concludes, from its hypothesis, that the "cost-spreading" was decisive, that Congress intended to limit the unions to the purposes advanced in that argument. As Justice Black stresses in his dissent, "Neither § 2 Eleventh nor any other part of the Act contains any implication or even a hint that Congress wanted to limit the purpose for which a contracting union's dues should or could be spent."[25] Since Congress was acutely aware of the huge union expenditures for political purposes[26] and did not explicitly restrict the use of union shop funds,[27] the majority opinion of the Supreme Court seemed to Justice Black to be untenable.

The extremes to which the Supreme Court will go in construing Congressional legislation so as to avoid the constitutional issue of free speech appear in the treatment of the Taft-Hartley ban on the use of union money for politi-

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without justification." *Id.*, 784. Justice Frankfurter dissenting was also "unable to accept the restrictive interpretation that the Court gives to § 2, Eleventh of the Railway Labor Act." *Id.*, 799.

[23] *Id.*, 749-750. See note 5 for the other six principles.

[24] *Id.*, 761-762. See 96 Cong. Rec. 16279, 17050-51, 17055, 17057, 17058 (1951).

[25] 367 U.S. 740, 784 (1961).

[26] The problem in contention, that is, the use of compelled dues for political purposes, was considered during both the hearings and the floor debates. Statements of Daniel P. Loomis, Chmn. of the Assoc. of W. Railways, in hearings of S.3295, Sub-committee of the Senate Committee on Labor and Public Welfare, 81st Cong. 2d Sess. p. 316-317, and hearings on H.R. 7789, House Committee on Interstate and Foreign Commerce, 81st Cong. 2d Sess. p. 160; 96 Cong. Rec. 17049-17050 (1951). See Justice Black's dissent, *supra*, n. 24, p. 785, n. 8, "Again, in 1958, when Senator Potter introduced his amendment to limit the use of compelled dues to collective bargaining and related purposes, he pointed out on the floor of the Senate that 'the fact is that under current practices in some of our labor organizations, dissenters are being denied the freedom not to support financially political or ideological or other activities which they may oppose'." See 104 Cong. Rec. 11214. It could hardly be contended that the debate on his proposal, which was defeated, indicated any generally held belief that such use of compelled dues was already proscribed under § 2, Eleventh or any other existing statute. See 85th Cong. 2d Sess. 104 Cong. Rec. 11214-11224, 11330-11347 (1958).

[27] It is very possible that the legislators considered the existing Taft-Hartley ban on union political expenditures as an adequate restriction on union use of exacted dues. 18 U.S.C.A. (1951) § 610.

cal purposes.[28] In *United States v. C.I.O.*,[29] the union and its president were indicted for contributing from union funds to the publication of an editorial in the C.I.O. News. The article urged the union members to support and vote for a particular candidate in a special Congressional election held in Maryland. In a survey by a Congressional Joint Committee on the operation of the labor law, there was almost unanimous agreement that the C.I.O. action definitely violated the Act.[30] Four Justices of the Supreme Court, agreeing with the District Court[31] and the Supreme Judicial Court of Massachusetts,[32] declared the union's activities legitimate on the ground that the prohibition of *union political activities contravened the First Amendment.* The majority of the Supreme Court, however, construed the Act as not to cover the alleged activities. In doing so it was forced to flout the express language of the Act[33] and to disregard extremely persuasive evidence that the Congress had intended to prohibit such activity.[34]

Two lower Federal Courts followed the Supreme Court's lead in limiting the scope of the Taft-Hartley ban on political spending in order to avoid constitutional issues. In *United States v. Painters Local Union No. 481*[35] the only question raised by counsel for either side was the constitutionality of the Taft-Hartley ban on political expenditures, as applied to articles appearing in newspapers of general circulation. The Court of Appeals for the Second

[28] This provision was originally enacted as Section 304 of the Labor Management Relations Act 1947, 61 STAT. 136, 159 (1947).

[29] 335 U.S. 106 (1948).

[30] 16 U.S. Law Week 3327, 3328-29 (1948).

[31] United States v. Congress of Industrial Organizations, 77 F. Supp. 355, 357 (D.D.C. 1948).

[32] Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 69 N.E. 115 (1946).

[33] That the union activity was clearly a violation of the express language of Sec. 304. The pertinent language of the Section is as follows: "It is unlawful for . . . any labor organization to make a contribution or expenditure in connection with any federal election at which Presidential or Vice Presidential electors . . . or a delegate or resident commissioner to Congress are to be voted for. . . ."

[34] 93 Cong. Rec. 6436-40 (1947) (remarks of Senator Taft). When Sec. 304 was being debated in Congress, Senator Taft was asked whether a labor publication would be permitted to express its support for a person that was considered pro-labor, he replied: "If it were supported by union funds contributed by union members as union dues it would be a violation of the law. . . ." 93 Cong. Rec. 6436 (1947). In this same debate Senator Taft stated:

> "A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law. . . . What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exists with respect to corporations." 93 Cong. Rec. 6440 (1947).

[35] 79 F. Supp. 516 (D. Conn. 1948), rev'd on other grounds. 172 F. 2d 854 (2d Cir. 1949).

Circuit held that the Act was not intended to cover such expenditures: "It seems impossible, on principle, to differentiate the scope of that decision [*United States v. C.I.O.*] from the case we have before us."[36] In *United States v. Construction & General Lab. L.U. No. 264*,[37] the same statutory construction as in the *C.I.O.* case was again used to hold that Section 304 of the Taft-Hartley Act does not prevent a union from paying its own members for the time they spend in political activities.[38] The Court felt that a contrary interpretation would leave a union or corporation open to prosecution if *any* employee on its payroll devoted any appreciable time to supporting a particular person running for office.

The latest significant Supreme Court consideration of the Taft-Hartley ban was in *United States v. Auto Workers*.[39] The union was charged with using general treasury funds to defray the cost of a commercial television broadcast in connection with primary and general elections of representatives to Congress from the State of Michigan. The general fund was allegedly maintained from the dues of the members, and thus the expenditures were neither voluntary political contributions nor subscriptions by union members. The union moved for dismissal on two grounds. The first was that the statute did not prohibit expenditures of this nature, and the second, that the provisions of the Act on their face and as construed and applied are unconstitutional under the First Amendment. The District Court, in dismissing the indictment as failing to state a cause of action,[40] construed the statute narrowly and thus avoided the constitutional objection. In a 6-3 opinion the Supreme Court reversed and remanded the case for a new trial. However, the majority refused to rule on the constitutional question on the ground that it was not absolutely necessary to a decision.[41] Mr. Justices Black, Douglas and Warren dissented vigorously, stating that the Act was being construed to prohibit a union from expressing its opinion on the issue of an election, and as such was a clear

[36] *Id.*, 856. The majority opinion states that any distinction between a union published newspaper such as in the C.I.O. case and an independent radio or newspaper "seems without logical justification; nor is such a differentiation suggested by the apparent purposes or by the terms of the statute or by its legislative history."

[37] 101 F. Supp. 869 (W.D. Mo. 1951).

[38] *Id.*, 875-876.

[39] 352 U.S. 567 (1957) rehear. den. 353 U.S. 943 (1957).

[40] United States v. International Union, Etc., 138 F. Supp. 53 (E.D. Mich., 1956).

[41] See Burton v. United States, 196 U.S. 283, 295-296. This doctrine of "avoidance of constitutionality" is a part of this broader "doctrine of necessity." *Supra*, n. 6.

violation of the First Amendment guarantees of freedom of speech. Though the dissenters were willing to decide the constitutional issue raised by the majority's interpretation, they appear quite ready to apply a restrictive construction to the statute and would have decided the case on the grounds that the proper interpretation was "to limit the word 'expenditure' to activity that does not involve First Amendment rights."[42]

While the Supreme Court may be faced with perplexing substantive constitutional issues in cases involving expenditure of union funds for political purposes,[43] it leaves the law in a state of confusion by construing the statute involved to avoid the constitutional issue.[44] In the situation presented by the principal case the Court had the difficult task of balancing the right of individual union members to support their own political ideologies, the union's interest in furthering legislation which it considers beneficial, and the economic stability of a union shop. Where it is necessary to reconcile such conflicting factors, which requires the type of investigation and regulation that only the legislature is equipped to handle, the Supreme Court by ruling on the constitutionality of an act could help to clarify the situation and enable Congress to decide if remedial legislation is needed. Such a ruling would have two further benefits: (1) it would enable a union to determine without a test case whether its activities were legitimate, and (2) it would alleviate the criticism and loss of prestige which necessarily results from the extreme construction that the Court was forced to reach in the instant case in avoiding the constitutional problem.

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[42] 352 U.S. 567, 598 (1957). In support of this they cite: United States v. C.I.O., 335 U.S. 106 (1948); United States v. Rumely, 345 U.S. 41 (1953); United States v. Harriss, 347 U.S. 612 (1954).

[43] The cases discussed, plus a state court decision that the federal law does not apply to union spending in connection with state elections — DeMille v. American Federation of Radio Artists, 175 P. 2d 851 (Cal. App. 1946) — represent all of the noteworthy judicial interpretations of what is now § 610 of the Federal Corrupt Practices Act, 2 U.S.C.A. § 251. Under this section there has never been a conviction against the unions.

[44] For example, in a case with similar facts to that of the principal case, but with a union governed by the Taft-Hartley Act, it would be difficult to predict an outcome. See Labor Management Relations Act (Taft-Hartley). This Act contains a permissive union shop section similar to the Railway Labor Act. Labor Management Relations Act, § 101, 61 STAT. 158(a)(3) (1947), 29 U.S. Code 157 (1958). But Labor Management Relations Act does contain an express provision that state right to work laws override compulsory unionism. 14(b), 61 STAT. 151 (1947), 29 U.S. Code § 154(b) (1948).