

PRIVILEGES AND IMMUNITIES CLAUSE OF COMMUNIST CONTROL ACT OF 1954 DOES NOT APPLY TO STATE UNEMPLOYMENT COMPENSATION PROGRAM

Communist Party, U.S.A. v. Catherwood
367 U.S. 389 (1961)

William Albertson applied for unemployment compensation under the New York Unemployment Insurance Law.¹ He was denied these benefits by the Unemployment Insurance Appeal Board on the ground that he had been employed by the Communist Party. Under section 3 of the Communist Control Act of 1954,² the Communist Party had been removed from the State's official roll of employers and therefore was not included within the Unemployment Insurance Law. On appeal, the New York Court of Appeals ruled that because Albertson's employment with the Communist Party had terminated before the Party had been removed from the roll of employers, he was entitled to unemployment compensation. However, the court ruled that the action of the State of New York, in striking the Communist Party from the State's list of employers, was correct under section 3 of the Communist Control Act.³ The Supreme Court of the United States granted certiorari⁴ to consider petitioner's claims that (1) the New York court had mistakenly construed the statute so as to compel the removal of the Communist Party from the list of employers and (2) that the statute itself was unconstitutional. The constitutional question was never reached⁵ as the Court reversed the New York interpretation on the ground that a reading of the statute does not give rise to the inference that it prevents the Communist Party from participating in state unemployment insurance programs.⁶

Section 3 of the Communist Control Act contains a general statement that the Communist Party is ". . . not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof."⁷ There is no definition included in the statute of the phrase "rights, privileges and immunities," and there is little in the committee reports or House and Senate debates that offers any specific meaning.⁸

¹ N.Y. Lab. Law. §§ 500-640 (1944).

² Communist Control Act § 3, 68 Stat. 775 (1954), 50 U.S.C. § 842 (1958).

³ *In re Albertson's Claim*, 8 N.Y.2d 77, 168 N.E.2d 242, 202 N.Y.S.2d 5 (1960).

⁴ 364 U.S. 918 (1960).

⁵ *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104 (1939):

"The Supreme Court will not decide an issue of constitutionality of a statute if the case may justly and reasonably be decided upon a construction of the statute under which it is constitutional."

⁶ *Communist Party, U.S.A. v. Catherwood*, 367 U.S. 389 (1961).

⁷ Communist Control Act, *supra* note 2.

⁸ There are some vague statements made in debate in both Houses of Congress

The New York Court of Appeals had adopted a broad interpretation of the statute. It reasoned that employer participation in the unemployment program is not merely a tax liability,⁹ but is also a highly advantageous position. The advantage primarily inheres in the ability of the employer to attract more competent employees by offering the security of unemployment benefits. The court held that the status of employer is a right or privilege and that payment of a contribution is a condition to the right or privilege. The fact that the Communist Party sought reinstatement as an employer is further indication that the nature of participation is more of an advantage than a disadvantage. Without further attempt to define a right or privilege under the Act, the Court of Appeals reached the conclusion that the State acted correctly in removing the Communist Party from the unemployment insurance program.

The New York court assumed that Congress intended, by the general wording of section 3 of the Communist Control Act, to prohibit the Communist Party from participation in any state or federal "program" which might prove beneficial to its avowed purpose of world domination. This view finds some support in a review of congressional action with respect to the Communist Party since 1940.¹⁰ The Supreme Court might well have affirmed the New York Interpretation on the basis of congressional intent expressed in the legislative history. However, had the broader interpretation of the Court of Appeals been accepted, it would have raised a question as to the constitutionality of the Act.¹¹ The Supreme Court has continually re-

such as, "What this bill really does is put the Communist Party, which is a conspiracy outside the pale of the law, where it should be." 100 Cong. Rec. 14719 (1954) (Remarks of Senator Ferguson).

⁹ Contributions under the Unemployment Insurance Law are considered to be taxes in New York. *Parisi v. Industrial Comm'r*, 8 Misc. 2d 260, 167 N.Y.S.2d 249 (1957). Taxes in New York have been defined as "burdens of a pecuniary nature" in *Hanson v. Griffiths*, 204 Misc. 736, 124 N.Y.S.2d 473 (1953) and as "a statutory liability" in *People v. Chenango County*, 39 N.Y.S.2d 785 (1943).

¹⁰ The Smith Act of 1940, 54 Stat. 670 (1940), 18 U.S.C. § 2385 (1958), was an attempt to limit the activities of subversive organizations by making it a criminal offense to advocate or teach concrete action for the violent overthrow of the United States Government, or to knowingly belong to an organization that so advocates. The latter clause, known as the membership clause, has been narrowly construed to include active knowing membership with specific intent to overthrow the Government. *Scales v. United States*, 367 U.S. 203 (1961). See also *Hellman v. United States*, 298 F.2d 810 (9th Cir. 1961). The Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. §§ 781-789 (1958), was an attempt to enact ". . . appropriate legislation recognizing the existence of such a world wide conspiracy and designed to prevent it from accomplishing its purpose in the United States." The Communist Control Act, *supra* note 2, is a continuation of a policy of restriction by terminating the Party's rights, privileges and immunities as a legal entity. See note, 23 Ohio St. L.J. 761 (1962).

¹¹ The Communist Party contended that this statute was in violation of the due process clause of the fifth amendment and article I, § 9 of the federal constitution as a bill of attainder. The Party also attacked the administrative action of New York as a violation of the due process clause of the fourteenth amendment. The Court rejected

affirmed the rule that it will refrain from deciding questions of constitutionality when the case can be justly decided on other grounds.¹²

Justice Harlan, for the unanimous Court, invoked this rule and based the Court's interpretation on the statute's specific wording, subsequent acts of Congress, and the application of section 3 by the federal authorities charged with the enforcement of the Act. It was pointed out in support of the majority that federal authorities have continued to recognize the Communist Party as an employer under the Federal Unemployment Tax Act¹³ and that it is undesirable to have conflicting state and federal interpretations in the field of unemployment compensation as the state and federal systems are closely integrated.¹⁴ Also, Congress has expressly excluded the Communist Party from the definition of "employment" in the 1956 amendments of the Social Security Act¹⁵ and the Federal Insurance Contributions Act.¹⁶ However, there has been no such exclusion from the Unemployment Tax Act. It appears that the federal authorities have not interpreted the status of employer, for the purposes of unemployment taxes, as a right or privilege under the Communist Control Act. This interpretation would seem to be in accord with the earlier New York decisions.¹⁷ The Communist Control Act does not purport to deny the Party tax burdens so the federal position does not seem inconsistent.

Does the fact that the Communist Party was a party to this controversy alter the policy considerations involved in deciding this case to a degree which is not consistent with the purpose of the statute? This may be a point of discussion in the light of recent criticism that has been directed against the Supreme Court concerning its attitude toward the enforcement of anti-Communist legislation.¹⁸ The Supreme Court has consistently avoided

the claim of a violation of the fourteenth amendment and did not reach the other constitutional issues.

¹² See, e.g., *Driscoll v. Edison Light & Power Co.*, *supra* note 5; *United States v. Raines*, 362 U.S. 17, 22 (1960): "This rule frees the Court from not only unnecessary pronouncements of constitutional issues but also premature interpretations of statutes in areas where their constitutional application might be cloudy."

¹³ Federal Unemployment Tax Act, 68A Stat. 439 (1954), 26 U.S.C. §§ 3301-3308 (1958).

¹⁴ The leading case on the subject is *Buckstaff Bath House Co. v. McKinley*, 308 U.S. 358, 364 (1939): "[I]t would seem to be a fair presumption that the purpose of Congress was to have the state law as closely co-terminous as possible with its own. To the extent that it was not, the hopes for a coordinated and integrated dual system would not materialize."

¹⁵ Social Security Amendments of 1956, 70 Stat. 839, 42 U.S.C. § 410(a) (1958).

¹⁶ Social Security Amendments of 1956, 70 Stat. 839, 26 U.S.C. § 3121 (1958).

¹⁷ See cases cited *supra* note 9.

¹⁸ "[T]he trend of the decisions under Chief Justice Warren . . . seems to indicate that the Court has once again extended the Bill of Rights to a point where it presents great obstacles to the fight against Communism which has been carried on by the Executive, Congress and the states." Ober, "Communism and the Court: An Examination of Recent Developments," 44 A.B.A.J. 35, 89 (1958).

attacks on the constitutionality of such legislation by exercising similarly narrow construction.¹⁹ The Court's decision in the principal case can easily be supported by the conflicting federal and state interpretations of the status of an employer and the necessity for a coordinated federal-state administration of unemployment compensation programs. The Court's action once again serves notice to Congress that it is dealing with a situation in which the constitutionality of such legislation is in doubt and that utmost specificity and clarity are required.

The importance of this case lies not only in that it is the first time the Court has had an opportunity to consider the scope and application of the Communist Control Act,²⁰ but also in that it spotlights an apparent conflict between congressional intention and a Supreme Court policy in the field of internal security legislation. By enacting section 3 of the Act, Congress intended to restrict benefits conferred on the Communist Party under state as well as federal law, and delegated some of the responsibility for frustrating the Party's objectives to the states.²¹ The Supreme Court, on the other hand, has expressed the opinion that the federal government is much better equipped to deal with internal security and, because of the existing comprehensive federal legislation in the area, there is no room for state action.²² The specific wording of the Act is in direct conflict with this doctrine of pre-emption.²³ The existence of this conflict supports the recent criticism of the Court for abandoning its policy of judicial self-restraint and exercising legislative judgment in direct violation of separation of powers.²⁴ It will be interesting to see how the Court reconciles its pre-emption doctrine in future cases involving the delegation of authority to the states. However, it is doubtful that the broad terms "rights, privileges and immunities" will ever be interpreted by the Court to apply to activities which could be regulated by specific acts using narrower language.

¹⁹ See cases cited *supra* note 10. See also *Noto v. United States*, 367 U.S. 290 (1961).

²⁰ *United States v. Silverman*, 132 F. Supp. 820 (1955), *rev'd*, 248 F.2d 671 (2d Cir. 1957), *cert. denied*, 355 U.S. 942 (1958). The court suggested in dictum that the purpose of the Act was certainly to deprive the Party of the right to nominate and place candidates on the ballot without distinguishing between federal and state elections. See also *Salwen v. Rees*, 16 N.J. 216, 108 A.2d 265 (1954), in which New Jersey precluded Communist candidates from appearing on state ballots.

²¹ *Ibid.* See also Auerbach, "Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech," 23 U. Chi. L. Rev. 173 (1956).

²² In *Pennsylvania v. Nelson*, 350 U.S. 497, 504 (1956), the Court reviewed the major anti-Communist legislation and said, "Taken as a whole, they envince a congressional plan which makes it reasonable to determine that no room has been left for the states to supplement it."

²³ *Ibid.* The Court ruled that the Smith Act had pre-empted the field of criminal prohibition for sedition.

²⁴ *Ober, op. cit. supra* note 18.