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Constitutional

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CONSTITUTIONAL—CIVIL

I. FREEDOM OF EXPRESSION

Anderson's Paving Inc. v. Hayes, 295 S.E.2d 805 (W. Va. 1982)

In *Anderson's Paving Inc. v. Hayes,*[1] the plaintiff corporation wished to make contributions in support of the passage of the "Roads for Jobs and Progress Amendment" which was proposed for ratification at a special election on November 3, 1981. Some months before the election, the plaintiffs wrote to the defendant prosecuting attorney, asking whether they would be prosecuted under the West Virginia Code,[2] which prohibited the expenditure of corporate monies on direct corporate speech in support of any candidate or any side of a referendum.

When the prosecuting attorney replied that they would be prosecuted, the plaintiffs filed a declaratory judgment action, seeking to have the statutes declared unconstitutional. After the circuit court ruled that the statutes did violate the constitutional standards, it certified the question to the supreme court, which affirmed the ruling.

Both the circuit court and the supreme court relied on the United States Supreme Court's decision in *First National Bank of Boston v. Bellotti,*[3] which struck down a similar Massachusetts statute. In its opinion, the Supreme Court noted that the sort of political subject matter which was restricted by the Massachusetts statute was "at the heart of the First Amendment's protection," and that the fact that the speaker was a corporation was irrelevant in determining whether speech relating to issues was protected.[4]

The *Belloti* court distinguished corporate spending on behalf of candidates from spending on behalf of an issue, and ruled that the latter was constitutionally protected.[5] In his opinion for the state court, Justice Neely noted that while the majority did not agree with the conclusions of the Supreme Court, they were nevertheless bound to follow them, and that the sections of the West Virginia Code that prohibited corporate speech on behalf of election issues were unconstitutional. Applying the doctrine of "least intrusive remedy"[6] the court upheld the other sections of the statutes.[7]

II. FREEDOM OF RELIGION

State v. Riddle, 285 S.E.2d 359 (W. Va. 1981)

State v. Riddle[8] was a test case brought by the parents of two school-aged

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[1] 295 S.E.2d 805 (W. Va. 1982).
[2] W. VA. CODE §§ 3-8-8, 3-9-14 (1979).
[3] 435 U.S. 765 (1978).
[4] *Id.* at 776-84.
[5] *Id.*
[6] 295 S.E.2d at 807.
[7] *Id.*
[8] 285 S.E.2d 359 (W. Va. 1981).

children. They had been prosecuted for violating the state's compulsory school attendance law, and raised the unconstitutionality of the statute as a defense. Specifically, they argued that it violated the "free exercise of religion" guaranteed by the first amendment.

Appellants' reliance on the Supreme Court decision in *Wisconsin v. Yoder*[9] was not well founded because of the factual differences in the two cases. In *Yoder,* the Amish practice of not sending children to public school past the eighth grade was upheld, but there "the Supreme Court was confronted with an ancient religious community which. . .had its own system of. . .training designed to prepare its children for life" in that community.[10] The Amish children completed the first eight years of their education in public schools, and so were equipped with basic skills that might enable them to live outside the community, should they so choose.

The court noted that the parents in *Riddle* belonged to a small, conservative religious sect, which was apparently quite isolated from the mainstream of society. They taught their children at home in order to insure their total indoctrination with their religious beliefs. One of the children was only ten,[11] and the court expressed concern that she would not be able to live successfully in contemporary society, should she ever choose to do so, if she were never exposed to any other side of the issue than the one her parents chose for her.

Sincerely held religious convictions may occasionally be overridden by the compelling state interest in the well-being of its youngest citizens.[12] Schools do not just teach, they also minister to the basic health needs of children and provide some protection against parental abuse, the court noted, before saying:

> We find it inconceivable that in the twentieth century the free exercise clause of the first amendment implies that children can lawfully be sequestered on a rural homestead during all of their formative years to be released upon the world only after their opportunities to acquire basic skills have been foreclosed and their capacity to cope with modern society has been so undermined as to prohibit useful, happy or productive lives.[13]

Moreover, the statutory provisions allow parents to qualify to give instruction to their children, and provide a "sound vehicle" for balancing the conflicting interests raised here, the court noted in affirming the convictions.[14] The parents had not even attempted to comply with the statutory requirements.

III. Residency Requirements

Sargus v. State Board of Law Examiners, 294 S.E.2d 440 (W. Va. 1982)

The thirty day residency requirement for taking the state bar exam was

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[9] 406 U.S. 205 (1972).
[10] 285 S.E.2d at 361.
[11] *Id.* at 362.
[12] *Id.* at 365.
[13] *Id.* at 366.
[14] *Id.* at 366-67.

struck down as unconstitutional in *Sargus v. State Board of Law Examiners.*[15] Petitioner Sargus lived in Ohio, and took a job with a Wheeling firm. The Board of Law Examiners informed her that she would not be permitted to take the state bar exam because she could not meet the residency requirement, so she petitioned the court.[16] The court found that the statute bore no "substantial relationship" to the state interest in protecting the public from unqualified attorneys, and struck it down as a violation of the privileges and immunities clause.[17]

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[15] 294 S.E.2d 440 (W. Va. 1982).
[16] *Id.* at 441.
[17] *Id.* at 445, 446.