Florida Law Review

Volume 1 | Issue 2 Article 13

March 2021

Constitutional Law: The Right of the Negro to Legal Education

William Reece Smith Jr.

result was reached in a 1948 California case which sustained the validity of a racing commission rule almost identical with that in the instant case.[20] This decision, however, was based not on the nature of the license but on the police power of the state to impose strict liability.

The premise of the principal case, that a racing trainer has a property right in the pursuit of his vocation, is inconsistent with the previous Florida view that operation of the racing business is a privilege granted by the state.[21] The result of the case might have been reached by a determination that the Racing Commission, in adopting an unreasonable and arbitrary rule, exceeded its statutory authority to promulgate reasonable regulations.[22]

CORISE VARN

CONSTITUTIONAL LAW: THE RIGHT OF THE NEGRO TO LEGAL EDUCATION

Fisher v. Hurst, 68 Sup. Ct. 389 (1948)

Petitioner, a Negro, applied for admission to the law school of the University of Oklahoma, and the application was denied because of her race. On a hearing on the merits, the state supreme court affirmed the state district court's refusal of her application for a writ of mandamus to the Board of Regents of the University.[1] On certiorari to the state supreme court, the United States Supreme Court directed that legal education be provided in conformity with the Fourteenth Amendment of the Constitution of the United States and that it be done as soon as provided for any other applicant.[2] The state supreme court transmitted the mandate to the state district court, which ordered the Board of Regents either to allow the petitioner to be enrolled upon proper application or to allow no one to be enrolled, provided, however, that if a separate law school was ready to function, the petitioner need not be enrolled. Petitioner in this

[20]Sandstrom v. Horse Racing Board, 189 P.2d 17 (Cal. 1948).

[21]See note 18 *supra*.

[22]State v. Rose, 122 Fla. 413, 165 So. 347 (1936); State v. State Racing Comm., 116 Fla. 143, 156 So. 317; *cf. Ex parte* Theisen, 30 Fla. 529, 11 So. 901 (1892).

[1]Sipuel v. Board of Regents, 180 P.2d 135 (Okla. 1947).

[2]Sipuel v. Board of Regents, 68 Sup. Ct. 299 (1948).

action sought, on a motion to file a petition for mandamus, to compel the state supreme court, the state district court, and the Board of Regents to comply with the mandate, alleging that the order of the district court denied the equal protection guaranteed by the Fourteenth Amendment. HELD, the district court's order complied with the mandate. Motion denied. Justice Rutledge dissenting. Justice Murphy was of the opinion that a hearing should be had on the merits.

The equal protection clause of the Fourteenth Amendment guarantees to all the right to equal treatment[3] in so far as state action is concerned.[4] However, the privilege of racial segregation by state constitution and statute has been recognized as a valid exercise of state police power.[5] Although a recent federal district court decision indicated that *complete* equality of educational facilities must be provided if there is racial segregation,[6] the United States Supreme Court has held that *substantially* equal facilities satisfy the constitutional requirement.[7] The number of persons seeking equality is immaterial, since the right is a personal one.[8] If the facilities are not substantially equal or are not provided at all, the privilege of segregation must bow to the constitutional guarantee.[9] It follows that when educational facilities are furnished to white students within a state and substantially equal facilities are not furnished the Negro, the constitutional right is denied.

Prior to this decision of the United States Supreme Court, the courts generally held that state officials were entitled to reasonable notice of the intention of the Negro to require similar educational facilities,[10] thus allowing the state time to establish a substantially equal negro counterpart.

---

[3]U. S. CONST. AMEND. XIV, §1; Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350 (1917).

[4]Civil Rights Cases, 109 U. S. 3 (1883).

[5]Gaines v. Canada, 305 U. S. 337 (1938); Gong Lum v. Rice, 275 U. S. 78 (1927); Pleesy v. Ferguson, 163 U. S. 537 (1895).

[6]Wrighten v. Board of Trustees, 72 F. Supp. 948, 953 (1947).

[7]Gaines v. Canada, 305 U. S. 337 (1938); Pleesy v. Ferguson, 163 U. S. 537 (1895); Ward v. Flood, 48 Cal. 36 (1874).

[8]Mitchell v. United States, 313 U. S. 80 (1941); Gaines v. Canada, 305 U. S. 337 (1938); McCabe v. Atchison T. & S. F. R. R., 235 U. S. 151 (1914).

[9]Pearson v. Murray, 169 Md. 478, 182 Atl. 590 (1936). *See* Ward v. Flood, 48 Cal. 36 (1874).

[10]Bluford v. Canada, 32 F. Supp. 707 (1940); State v. Canada, 348 Mo. 298, 153 S. W.2d 12 (1941); State v. Withaw, 179 Tenn. 250, 165 S. W.2d 378 (1942). *Cf.* Wrighten v. Board of Trustees, 72 F. Supp. 948 (1947).