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## Constitutional Law -- Minimum Wage Legislation

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### Constitutional Law—Minimum Wage Legislation.

In a recent comment in this Review the cases involving the constitutionality of minimum wages were reviewed.<sup>1</sup> In a 5-4 decision in April, 1937 the United States Supreme Court reversed itself on the question.<sup>2</sup> Taking judicial notice of "the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent,"<sup>3</sup> the Court expressly overruled the *Adkins* case<sup>4</sup> and upheld a Washington statute regulating minimum wages for women and children.

The condemning feature of previous minimum wage statutes in that they looked at only one side of the employment contract was not entirely absent from the Washington case.<sup>5</sup> Notwithstanding this objection heretofore sustained, the Court justified the act as a proper exercise of the state police power.<sup>6</sup> The majority recognized that the need for protection of women by minimum wage legislation outweighed all arguments as to denial of due process. "The Constitution," Chief Justice Hughes wrote, "does not speak of freedom of contract. . . . And regulation which is reasonable in relation to its subject and is adopted in the interests of the community"<sup>7</sup> is not an unreasonable restraint on that liberty of which no one may be deprived without due process. Moreover, the health and morals of our women employees are sufficiently close to public interest to justify legitimate protection; minimum wage requirements afford an "admissible means to that end."<sup>8</sup>

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occasional opportunity for fraud is to be the test, then there is no reason why every grocer, every merchant, every automobile dealer, . . . and every mechanic who deals more frequently with the public in general and whose opportunities for fraud are far greater than those of the real estate agent or salesman, may not be put on the same basis. . . . The result will be that all . . . who fail to establish their moral fitness will not only be deprived of their means of livelihood, but will become a burden . . . on . . . the community at large. . . . Fitness on the part of the real estate broker, . . . is a thing greatly to be desired, but . . . we shall have to leave something to religious and moral training, to public opinion, and to the ordinary laws of the land."

<sup>1</sup> (1936) 15 N. C. L. Rev. 50.

<sup>2</sup> *West Coast Hotel Co. v. Parrish*, 57 Sup. Ct. 578, 81 L. ed. Ad. Op. 455 (1937).

<sup>3</sup> 57 Sup. Ct. 578, 585, 81 L. ed. Ad. Op. 455, 463.

<sup>4</sup> *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 394, 67 L. ed. 785 (1922).

<sup>5</sup> The Washington statute requires the employer to pay a wage "sufficient for the decent maintenance" of the woman worker, thus apparently imposing an obligation to pay irrespective of the value of the services as did the District of Columbia law which required the minimum wage to be sufficient to supply "the necessary cost of living." See (1936) 15 N. C. L. Rev. 50, 51.

<sup>6</sup> "The statute now before us is like the latter (speaking of the District of Columbia law) but we are unable to conclude that in its minimum wage requirement the State has passed beyond the boundary of its broad protective power." *West Coast Hotel Co. v. Parrish*, 57 Sup. Ct. 578, 584, 81 L. ed. Ad. Op. 455, 461.

<sup>7</sup> 57 Sup. Ct. 578, 581, 81 L. ed. Ad. Op. 455, 458.

<sup>8</sup> 57 Sup. Ct. 578, 585, 81 L. ed. Ad. Op. 455, 462.

In an attempt to distinguish its position from that adopted in the recent New York case<sup>9</sup> the majority stated that no application was made there for a reconsideration of the constitutional question involved in the *Adkins* case. The sole question ruled on by the Court in the New York case was whether the case was distinguishable from the *Adkins* case.<sup>10</sup>

If the Court had so desired, it could have avoided the effect of the technical holding in the New York case and reconsidered the fundamental constitutionality of minimum wages. This question was presented the Court in October, 1936 in a petition to rehear the New York case. The Court, however, denied the rehearing.<sup>11</sup>

In a powerful dissent apparently aimed at the entire New Deal Administration and criticising the majority for their change of policy, Justice Sutherland declared the "judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. . . . If the Constitution . . . stands in the way of desirable legislation, the blame must rest on the instrument and not upon the Court for enforcing it according to its terms. The remedy in that situation . . . is to amend the Constitution."<sup>12</sup> In the judgment of the minority, minimum wage legislation cannot be a reasonable exercise of the state's police power.

In upholding the Washington law, much emphasis was placed on the point that "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence," thus necessitating legislative protection.<sup>13</sup> Although this case represents a reversal by the Court on the fundamental issue, there still remains open the question of constitutionality of a general minimum wage law applicable both to men and women.

O. W. CLAYTON, JR.

### Constitutional Law—North Carolina Unemployment Compensation.

In September, 1935, the Alabama Unemployment Compensation Law was enacted, and later amended in April, 1936.<sup>1</sup> This Act pro-

<sup>9</sup> *Morehead v. People of New York*, 298 U. S. 587, 56 Sup. Ct. 918, 80 L. ed. 1347 (1936).

<sup>10</sup> *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 394, 67 L. ed. 785 (1922), cited *supra* note 4.

<sup>11</sup> *Morehead v. People of New York*, 57 Sup. Ct. 4, 81 L. ed. Ad. Op. 65 (1936).

<sup>12</sup> *West Coast Hotel Co. v. Parrish*, 57 Sup. Ct. 578, 587, 81 L. ed. Ad. Op. 455, 465.

<sup>13</sup> 57 Sup. Ct. 578, 583, 81 L. ed. Ad. Op. 455, 460. This same argument as to woman's physical structure has been advanced to uphold other laws regulating their employment. *Muller v. Oregon*, 208 U. S. 412, 28 Sup. Ct. 324, 52 L. ed. 551 (1908).

<sup>1</sup> GEN. ACTS ALA. 1935, p. 950; GEN. ACTS ALA. 1936, Ex. Sess., pp. 176, 225, 228.