IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 10.

AMERICAN COMMUNICATIONS ASSOCIATION, C.I.O., JOSEPH P. SELLY, ETC., ET AL, *Appellants*,

v.

CHARLES T. DOUDS, INDIVIDUALLY AND AS REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD, Second Region.

On Appeal from the District Court of the United States for the Southern District of New York.

MOTION OF THE NATIONAL LAWYERS GUILD FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR REHEARING.

The National Lawyers Guild respectfully prays leave to file a brief as amicus curiae in the above captioned case in support of the petition for rehearing heretofore filed herein by the appellants. Counsel for the appellants has advised

that they will send directly to the clerk the written consent of counsel for appellant. The Solicitor General of the United States has written applicant that he would not give his consent to the filing of any briefs as amicus curiae as he deemed that amended paragraph 9 of Rule 27 of the Rules of this Court showed that this court itself desired to pass on the propriety of filing such briefs.

The National Lawyers Guild is an organization of members of the American bar, devoted particularly to the protection of the fundamental civil rights guaranteed by the Constitution of the United States. It believes that this Court's decision, insofar as it held that the requirement of Section 9 (h) that as a prerequisite to access to Board machinery officers of unions take oaths that they are not members of the Communist Party, was not a bill of attainder overlooked well established principles heretofore stated and applied by this and other Courts. Moreover, it believes that this point has not been adequately presented by counsel for the parties.

In so holding, this Court apparently assumed that a bill of attainder must be punishment for past actions whereas in *Cummings* v. *Missouri,* 4 Wall. 277 (1866) this Court, at pages 323-324, collects cases, and quotes with approval cases, holding that a bill of attainder covers punishment for action or failure to act in the future as well as in the past.

The fact that article 1, section 9 prohibits Congress from enacting either bills of attainder or ex post facto laws has been held not to mean that only ex post facto laws are bills of attainder, as this Court now seems to hold.

Nor are bills of attainder limited to punishment for belief rather than conduct. It has been the traditional characteristic of bills of attainder that past or future members of a proscribed group were deprived of the right to assume semi-official positions, such as executors, trustees or administrators, because it was believed their beliefs would lead to conduct inimical to the state. Cf. the *Cummings* case at p. 321.

The vice of the bill of attainder is that the finding that named individuals or a named group of individuals hold views likely to result in harm to the state, is made by the legislature rather than by the judiciary. Cf. *Calder* v. *Bull,* 3 Dall. (U.S.) 386; *United States* v. *Lovett,* 382, U.S. 303, 315. If Congress should prescribe that all persons belonging to any group advocating political strikes shall take oaths before holding office in a union, that would not be a bill of attainder. The courts would then have to determine whether members of the Communist Party belonged to a group advocating political strikes. The members of the group would have the usual safeguards of a judicial trial and they would know for what they were being tried. Here neither the members of the Communist Party or the Party itself have been given such a judicial trial. But they have been condemned legislatively, whether for this reason or some other, without any semblance of a trial.

It is to be noted that Congress made no finding that the Communist Party or its members were likely to promote political strikes. This word was not mentioned in the statute nor in the reports accompanying the bills nor on the floor of Congress during the debates. While it would still be a bill of attainder had such finding been made, the fact that such finding was not made, reemphasizes the unfairness of bills of attainder.

A reading of the statute itself and its legislative history indicates Congress named the Communist Party because it believed it to be an organization advocating the overthrow of the government by force and violence but did not trust the courts so to find. See Senator Ball's statement during the debates on the Taft-Hartley Act, that Communists "are out to wreck the American system, although again I say it may be impossible to prove it against them" 93 Cong. Rec. (Daily Copy) 5085, May 9, 1947, reprinted Legislative History of the Labor Management Relations Act (Gov't. Print. Off., 1947), p. 1416.

The Supreme Court of California in an opinion by Mr. Chief Justice Gibson held unconstitutional a statute barring the Communist Party from the ballot because the finding was made by the legislature rather than the judiciary. *Communist Party* v. *Peek,* 20 Calif. 2d 536, 127 P. 2d 889, 896. There it was assumed the legislature found the Communist Party to advocate the overthrow of the government by force. But the ruling would undoubtedly have been the same had it been assumed the legislature found the Communist Party to advocate political strikes.

The National Lawyers Guild is prepared to and will, if this motion for leave to file is granted, present to the Court by whatever date it fixes, a brief fully covering the foregoing point.

We believe that this point is one of great importance to the maintenance of our traditional constitutional rights.

For the foregoing reasons it is respectfully submitted that this Court should grant the National Lawyers Guild leave to file a brief as amicus curiae in support of the petition for rehearing.

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