

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 236.

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

STEVE NELSON,
Respondent.

**BRIEF OF AMICUS CURIAE, LATHAM CASTLE,
ATTORNEY GENERAL OF THE STATE OF ILLI-
NOIS, IN SUPPORT OF A PETITION FOR WRIT
OF CERTIORARI TO THE SUPREME COURT OF
PENNSYLVANIA.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

*Amicus curiae, Latham Castle, Attorney General of the
State of Illinois, respectfully prays that a writ of certiorari
issue to review the judgment of the Supreme Court of
Pennsylvania in the above cause.*

STATEMENT IN SUPPORT OF PRAYER OF
AMICUS CURIAE.

For more than thirty-five years the General Assembly of Illinois by law has proscribed sedition. The validity of those statutes were sustained by the highest tribunal of Illinois. *People v. Lloyd*, 304 Ill. 23, 136 N. E. 505 (1922).

For the convenience of the court, the Illinois statutes which may be involved are affixed as Appendices A and B.

The opinion of the Supreme Court of Pennsylvania in this cause casts serious doubt upon the validity of those statutes. Unless the decision of the Supreme Court of Pennsylvania is reversed, an important segment of the police power of Illinois is in jeopardy. Illinois will have no power to protect itself against subversives. It will be asserted that power to punish disloyalty is vested solely in the Federal government. To sustain the decision of the Supreme Court of Pennsylvania in this cause is to cast into jeopardy the long-established authority represented by decisions of this court and of courts of last resorts of several states.

A majority of the Supreme Court of Pennsylvania have found that Congress intended to supersede State legislation on subversive activities. They quote from *Savage v. Jones*, 225 U. S. 501, 533, as follows:

“* * * For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and *that which needs must be implied is of no less force than that which is expressed.*” (Appx. Pet. for Cert. pp. 66a.)

Section 3231 of the Federal Code of Crimes and Criminal Procedure of 1948 provides:

“The district courts of the United States shall have

original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

“Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.”

As pointed out in petitioner’s brief at pp. 43-45, “Nothing in this title” refers to Title 18 which includes the Smith Act. Thus, doubtful implication is held to override clear expression.

The majority of the Supreme Court of Pennsylvania further justify supersession as follows:

“* * * When, therefore, a State assumes to punish, as does the Pennsylvania statute here involved, sedition against the United States, it is intruding in a matter where the national interest is obviously paramount. It follows necessarily that the Federal Government’s control of the field must be exclusive if it is to protect itself effectively and completely. And that means no sharing of the jurisdiction with the States.” (Appx. pp. 69a, 70a.)

This, we respectfully submit, is a *non sequitur*. The *reductio ad absurdum* of this position is that every time Congress legislates on any subject, all State legislation in that field, though complementary and not repugnant to Federal law, will nevertheless be automatically suspended and superseded. The police power of the State would then exist only by virtue of congressional indulgence. Federalism, as we have known it, will be destroyed and the state reduced to the impotent status of a French department.

The cunning subversive, the secret agent of an alien government, and the lurking saboteur each represents as great a threat to the peace and dignity of the State of Illinois as they do to the national government. It is imperative that the citizens of Illinois be protected against them.

The State of Illinois endorses the argument of the Commonwealth of Pennsylvania. Authority to sustain the points of petitioner has been adequately presented in its brief. A further review of case authority or extended argument is deemed unnecessary. Our position is clearly and succinctly put by Judge Bell in his dissenting opinion:

“The analogous decisions of the Supreme Court of the United States, the preservation of the police power of every Sovereign State in the United States, and—most important of all—the protection, safety and security of our Country imperatively require that the Pennsylvania Sedition Act be sustained.” (Appx. Pet. for Cert., p. 81a.)

CONCLUSION.

We respectfully urge the petition of the Commonwealth of Pennsylvania for a writ of certiorari be granted.

LATHAM CASTLE,
Attorney General of the State of Illinois,
Amicus Curiae.

GRENVILLE BEARDSLEY,
JOHN L. DAVIDSON, JR.,
WILLIAM C. WINES,
Assistant Attorneys General,
Of Counsel.

APPENDICES.

The Following Statutes of the State of Illinois Relating to Subversive Activities will be Affected by a Construction of Section 2385 of the Federal Code of Claims and Federal Procedure of June 25, 1948, 62 Statute 808, 18 U. S. C. A., 2385:

A.

“Advocating overthrow of government. It shall be unlawful for any person openly to advocate, by word of mouth or writing, the reformation or overthrow, by violence or any other unlawful means, of the representative form of government now secured to the citizens of the United States and the several states by the Constitution of the United States and the Constitutions of the several states.” Illinois Revised Statutes, 1953, Chapter 38, Section 558.

“Utterance of paper advocating overthrow of government. It shall be unlawful for any person to publish, issue or knowingly sell or distribute any book, paper, document or other written or printed matter which advocates crime and violence, as a means of accomplishing the reformation or overthrow of the constitutional representative form of government so secured to the citizens of the United States and the several states.” Illinois Revised Statutes, 1953, Chapter 38, Section 559.

“Societies to overthrow government. It shall be unlawful for any person to organize, aid in the organization of, or become a member of any society or association, the object of which is to advocate the reformation or overthrow of the existing form of government, by violence or any other unlawful means.” Illinois Revised Statutes, 1953, Chapter 38, Section 560.

“Attendance at meeting. It shall be unlawful for

any person voluntarily and with knowledge of the purpose of such meeting or assembly to be present at any meeting or assembly at which the reformation or overthrow of the existing form of government, by crime and violence is advocated." Illinois Revised Statutes, 1953, Chapter 38, Section 561.

"Use of premises. It shall be unlawful for any person owning, possessing or controlling the use of any room, building or other premises, knowingly to permit the same to be used as the headquarters of any organization which advocates crime and violence or as a meeting place for any meeting or assembly at which crime and violence is advocated, as a means of accomplishing the reformation or overthrow of the existing form of government." Illinois Revised Statutes, 1953, Chapter 38, Section 562.

"Display of emblems. It shall be unlawful to display or exhibit at any meeting, gathering or parade, public or private, any flag, banner, emblem or other insignia, symbolizing or intending to symbolize a purpose to overthrow by force or violence or by physical injury to person or property of the representative form of government now secured to the citizens of the United States and the several states by the Constitution of the United States and the Constitution of the State of Illinois." Illinois Revised Statutes, 1953, Chapter 38, Section 563.

"Penalty. Any person who shall violate sections 265a, 265b, 265c or 265f of this Act shall be deemed guilty of a felony, and upon conviction therefor shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than ten years. Any person who shall violate sections 265d and 265e of this Act shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for a period of not less than six months nor more than one year, or both." Illinois Revised Statutes, 1953, Chapter 38, Section 564.

"Aiding rebellion, riot, etc. Any person who, for

the purpose of inciting or aiding rebellion, riot or insurrection in this state against the government or laws of this state or of the United States, or a hostile invasion of this state, shall transmit or cause to be transmitted by telegraph any communication whatever, shall be imprisoned in the penitentiary not exceeding ten years." Illinois Revised Statutes, 1953, Chapter 134, Section 10.

B.

The following statutes will be affected indirectly in so far as they are applicable to subversive activities.

"To do an illegal act—Boycott—Black list. If any two or more persons conspire or agree together, or the officers or executive committee of any society or organization or corporation, shall issue or utter any circular or edict, as the action of or instruction to its members * * * or to do any illegal act injurious to the * * * police, or administration of public justice * * * or to commit any felony, they shall be deemed guilty of a conspiracy; and every such offender, whether as individuals or as the officers of any society or organization, and every person convicted of conspiracy at common law, shall be fined not exceeding \$2,000 or shall be imprisoned in the county jail not exceeding one year, or shall be imprisoned in the penitentiary for a term of not less than one year and not exceeding five years, or may be so fined and so imprisoned in the county jail or penitentiary." Illinois Revised Statutes, 1953, Chapter 38, Section 139.

"Against state, etc. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That if two or more persons conspire either to commit any offense against the State of Illinois, or any county, incorporated city, village, town or township thereof, or to defraud the State of Illinois, or any county, incorporated city, village, town or township thereof, in any manner, or for any purpose, and one or more of such parties, do any act to effect (affect)

the object of the conspiracy, all parties to such conspiracy shall be liable to a penalty of not less than one hundred dollars, and not more than five thousand dollars, and to be imprisoned in the penitentiary for a term of not less than one year nor more than two years or imprisonment in the county jail for any period not exceeding two years. Provided, however, this Act shall not be construed to modify or repeal any other law in force in this State." Illinois Revised Statutes, 1953, Chapter 38, Section 140.

"Unlawful assembly. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and be severally fined not exceeding \$100.00 Illinois Revised Statutes, 1953, Chapter 38, Section 506.

"Unlawful assembly. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable or other public officer, the person so offending shall be severally fined not exceeding \$200.00." Illinois Revised Statutes, 1953, Chapter 38, Section 507.