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Constitutional Law - Due Process of Law - Fluoridation of Water Supply by City

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In the instant decision the Supreme Court considered and rejected the arguments which, in the past, have been successful in preventing its use. The decision should at long last put an end to recurring litigation over the constitutionality of the statute.[20]

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CONSTITUTIONAL LAW—DUE PROCESS OF LAW—FLUORIDATION OF WATER SUPPLY BY CITY

The Shreveport City Council adopted a resolution authorizing the fluoridation of the city water supply as a means of combating tooth decay in children. The plaintiffs, as residents, citizens, taxpayers, and purchasers of water from the city, sought to enjoin the fluoridation, contending (1) that the contemplated action was not authorized by the city's charter, and (2) that even if authorized by the charter, the measure was nevertheless repugnant to the due process and equal protection clauses of the fourteenth amendment. The trial court issued the injunction, stating that the measure was strictly within the realm of private dental hygiene and bore no reasonable relation to the public health. On appeal, *held*, reversed. The city's fluoridation of its water supply did bear a reasonable relation to the general health and welfare of the community, was therefore authorized by the city's charter, and violated neither the due process nor equal protection clause of the fourteenth amendment. *Chapman v. City of Shreveport*, 225 La. 859, 74 So.2d 142 (1954).

Concerning the constitutionality of state legislation enacted for the public health and welfare, the Supreme Court of the United States has stated: "Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment."[1] In accordance with this view, the Court has upheld a state statute providing for the sterilization of idiots to prevent an increase in the number of

20. Lumbermen's Mutual Casualty Co. v. Elbert, 75 Sup. Ct. 151 (1954), decided the same day as the *Watson* case, also settled an issue concerning the Louisiana direct action statute which has often been involved in litigation. Federal jurisdiction was upheld on the ground that the "matter in controversy . . . is between: (1) Citizens of different States" (28 U.S.C. § 1332(a) (1952)) whenever an out-of-state insurer is sued directly (without joinder of the insured) by a Louisiana citizen, regardless of the fact that the insured wrongdoer is also a Louisiana citizen.

1. West Coast Hotel Co. v. Parrish, 300 U.S. 379, 399 (1937).

potential criminals and wards of the state.[2] Similarly, compulsory vaccination to protect the public against communicable disease has been upheld.[3] The Court has also declared constitutional state legislation fixing maximum hours of work for women, reasoning that "the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."[4] The decisions of the Louisiana Supreme Court show a similar deference to the judgment of the legislature.[5] The courts in three other jurisdictions have refused to invalidate fluoridation measures similar to the one involved in the instant case.[6] In those cases, a prominent issue was whether or not fluoridation of water supplies is an interference with freedom of religion that violates the fourteenth amendment. In none of them did the court hold that it is. The Supreme Court of the United States has refused to review the decision in this case and another.[7]

The major portion of the court's opinion in the instant case seems to deal with the validity of the fluoridation measure under the city charter provision authorizing the city to legislate for the health of its inhabitants.[8] The court discussed this question in terms of the "reasonableness" of the relation between fluoridation of the city water supply and the public health. The court also regarded the validity of the measure under the fourteenth amendment as depending upon its "reasonableness." As a result, it is not clear in certain portions of the opinion concerning the "reasonableness" of the measure whether the court is dealing with the city's power to fluoridate the water supply under the terms of its charter or instead with the constitutionality of the charter insofar as it gives the city such power.[9]

2. Buck v. Bell, 274 U.S. 200 (1927).

3. Jacobson v. Massachusetts, 197 U.S. 11 (1905).

4. Muller v. Oregon, 208 U.S. 412, 421, 422 (1908).

5. Shreveport v. Conrad, 212 La. 737, 33 So.2d 503 (1947); New Orleans v. Shick, 167 La. 674, 120 So. 47 (1929); State *ex rel.* Civello v. New Orleans, 154 La. 271, 97 So. 440 (1923); State v. McCormick, 142 La. 580, 77 So. 288 (1917); State *ex rel.* City of Lake Charles v. St. Louis Ry., 138 La. 714, 70 So. 621 (1915).

6. de Aryan v. Butler, 119 Cal. App.2d 674, 260 P.2d 98 (1953), *cert. denied*, 347 U.S. 1012 (1954); Kraus v. City of Cleveland, 121 N.E.2d 311 (Ohio 1954), *affirming* 116 N.E.2d 779 (Ct. Comm. Pl. Ohio 1953); Dowell v. Tulsa, 273 P.2d 859 (Okla. 1954).

7. Chapman v. City of Shreveport, 75 Sup. Ct. 216 (1954); de Aryan v. Butler, 119 Cal. App.2d 674, 260 P.2d 98 (1953), *cert. denied*, 347 U.S. 1012 (1954).

8. CITY CHARTER OF SHREVEPORT § 2.01.

9. For example, the court said, "The plan for fluoridation, therefore, bears a reasonable relation to the general welfare and the general health of the community, and is a valid exercise of the power conferred by Section

Uncertainty also exists to some extent with respect to the court's treatment of the equal protection issue in the case. This question was presented by the fact that all persons in the city were virtually forced to consume fluoridated water and bear the expense of the fluoridation although only children of certain ages derived any immediate benefit from the program. This issue is somewhat similar to the question of whether the fluoridation was a health measure designed to benefit the entire public and not an unauthorized invasion of the realm of private health for the benefit of a limited class, which the trial court had held it was. The court found that the problems of dental caries in children properly falls within the domain of public health by reason of "its seriousness as affecting the health and well being of the community."[10] The court reasoned that, since the "children of today are the adult citizens of tomorrow" who must eventually maintain the government, legislation which reduces dental caries among them is "beneficial to all citizens."[11] The court did not consider fluoridation of the city water supply an improper means for achieving this end, referring to vital statistics from other communities where fluorides are naturally present in the water supply and to the opinion of "respectable medical authority."[12] The court disposed of plaintiff's argument that the measure violated the equal protection clause with a quotation from a decision of the Supreme Court of the United States stating that "in the exercise of the police power reasonable classification may be freely applied" and that legislation does not violate the equal protection clause "merely because it is not all-embracing."[13] The court also found that fluoridation of the city's water supply was neither arbitrary, oppressive, nor unreasonable, and consequently did not offend the due process clause of the fourteenth amendment.

How do the objectives of the legislation challenged in the instant case compare to those of the statutes involved in similar decisions of the United State Supreme Court? The public's experience with epidemics made the public interest served by the compulsory vaccination statute an obvious one.[14] Sterilization of idiots to prevent the procreation of potentially unde-

2.01 of the charter if it is not arbitrary or unreasonable." Chapman v. City of Shreveport, 225 La. 859, 870, 74 So.2d 142, 146 (1954).

10. *Id.* at 870, 74 So.2d at 146.
11. *Id.* at 870, 74 So.2d at 145.
12. *Id.* at 870, 74 So.2d at 146.
13. Zucht v. King, 260 U.S. 174, 177 (1922).
14. Jacobson v. Massachusetts, 197 U.S. 11 (1905).

sirable citizens conferred a more speculative but nevertheless demonstrable benefit upon the public.[15] The same may be said of the regulation of women's hours of employment.[16] Compared to these statutes, the benefit conferred upon the public generally by the fluoridation of water supplies seems remote and conjectural to the writer. It also seems that the means employed by the city to achieve its purpose in the instant case have a somewhat broader sweep than the statutes involved in these decisions. The remedy in the sterilization case was narrowly tailored to fit only those persons who, upon proper medical examination, had been found to contribute to the evil sought to be eradicated. No other member of the public was sterilized. Regulation of women's hours of work was similarly directed at the source of the evil, women's contracts of employment, to which employers were necessarily parties. In the field of compulsory vaccination, the entire public is subjected to vaccination, but every member of the public is a potential carrier of disease. The fluoridation measure in the instant case, while aimed at the prevention of dental caries in children, subjected not only children to the treatment, but other members of the public who in no way contributed to the evil. Nevertheless, the Louisiana Supreme Court did not find the measure arbitrary, oppressive, or unreasonable. It is interesting to note that the legislation in the instant case was not challenged specifically as an invasion of freedom of religion.

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CONTRACTS—CONSIDERATION—PROMISSORY ESTOPPEL

Plaintiff employees of defendant bus company were covered by a collective bargaining agreement providing for vacation pay and sick leave with pay, and also by a company-sponsored retirement plan. Under these programs, sick leave and retirement benefits accumulated from year to year. Defendant, in accordance with its plan to sell its buses and other equipment, appeared before the City Council of High Point, North Carolina, to obtain approval of the sale. In the presence of plaintiffs' representatives, defendant's attorney verbally promised[1] to pay plaintiffs an

15. Buck v. Bell, 274 U.S. 200 (1927).
16. Muller v. Oregon, 208 U.S. 412 (1908).
1. Defendant contended that no promise was made at all, but the court assumed for purposes of the opinion that the promise was made.