

sumption of validity when an act of the legislature is passed, thus making it difficult to strike down legislation under the equal protection of the laws clause.

Fortunately, the federal courts lead by the Supreme Court have repudiated the presumption of validity when classification entered into the field of race, religion, or national origin.

The state courts, on the other hand, have lagged behind in this area. I suggest that the inclusion of the specific language would make it perfectly clear to the courts of this state, that the presumption of the legislative validity in this field does not apply with the same force that it applies in the economic area.

THE CHAIRMAN: You have one-half minute, Delegate Scanlan.

DELEGATE SCANLAN: One of the great objectives of this Convention is to erect a charter of state government that would allow us to take the lead in certain areas, rather than always being required to fall back upon the federal government to vindicate liberties and achieve progress.

I suggest the amendment sponsored by the minority is an instance of where this State could set an example to the other states and to the federal government, and for once furnish an example of the State taking the lead in an area of human liberties, rather than always following.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: Mr. Chairman, I yield the balance of the majority's time to Delegate Hostetter.

THE CHAIRMAN: Delegate Hostetter, you have five minutes.

DELEGATE HOSTETTER: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: I think we have heard enough about state action and I certainly agree with Delegate Hardwicke when he says that we did labor long and hard to try to make this a colorblind constitution, and I think that probably Delegate Hardwicke and Delegate Mitchell probably worked the hardest on this.

Delegate Scanlan has indicated that the additional wording will add a great deal, but it has been my understanding since we have adopted the identical language of the federal Constitution, Amendment 14, that this also entitles us to the body of case law which comes with that, so that we would be right in line with the Supreme Court.

Now, as I say, enough has been said about state action. However, it is almost an indefinable term. On one occasion, the Supreme Court will go into the private sector, as it did in *Shelley v. Kraemer*, and will give a ruling in that area, simply because state judication was sought to uphold the covenants of a realty agreement.

On the other hand, in two other cases, *Drews v. State of Maryland* and *Watkins v. Oakland Jockey Club*, an action on the part of the State was involved, and the Supreme Court went in the opposite direction and said that the action of the State in these cases had not endorsed discrimination.

I would like to quote at this point from an article in the CORNELL LAW QUARTERLY with respect to these two last cases that I have been talking about.

"Drews and Watkins emphasize private property interests and the right to enforce these interests."

"Cases such as Drews and Watkins are reasonable decisions and in the sphere of judicial enforcement, private property rights and private decisions will be meaningless unless they are enforceable."

Unless we have access to the courts and to the executive, and to the police authority, our private property rights in some areas may be meaningless to us.

At this point, I would like to quote briefly from the Sixth Committee Report of the Constitutional Convention Commission. It states here "The Committee seriously considered expanding the equal protection clause to include a statement such as that found in Section 20 of the new Connecticut Constitution of 1965." (This section is quoted in the minority report.)

"The Committee's principal reason for opposing such a provision is that it would introduce into the Declaration of Rights terms which are indefinite in meaning and indeterminate in scope from a legal standpoint.

"The Committee respectfully suggests that the quoted provision amounts to a comprehensive mandate directed to private actions and relationships as well as to acts of the government vis-a-vis individual citizens. As such, the Committee believes it sweeps far beyond the principle of equal protection in the 14th Amendment, has no identifiable limits, and carries a potential impact which is impossible for any member of the Commission or Convention to foresee or evaluate."