

HAGUE v. C. I. O., 307 U. S. 496.

The following summaries of the briefs in the case of *Hague v. C. I. O.*, ante, p. 496, will be of interest to the profession.

Messrs. Charles Hershenstein and Edward J. O'Mara, with whom *Messrs. James A. Hamill and John A. Matthews* were on the brief, for petitioners.

The State has absolute control over the use of the streets and public places, for the benefit of the public at large, which it may delegate to a municipality. Under the law of New Jersey no one has the right to hold a public meeting in the streets or public places of a municipality without the consent of the local authorities. *Commonwealth v. Davis*, 162 Mass. 510, affirmed, *Davis v. Commonwealth*, 167 U. S. 43; *West v. Monmouth Beach*, 107 N. J. L. 445; *Burlington v. Pennsylvania Railroad*, 56 N. J. Eq. 259, 261; *Long v. Jersey City*, 37 N. J. L. 348, 352; *Harwood v. Trembley*, 97 N. J. L. 173, 175; *Dillon, Municipal Corporations*, 5th ed., § 1163; *Mettler v. Ottumwas*, 197 Iowa 187; *Glasgow v. St. Louis*, 87 Mo. 678; *In re Unger*, 1 Okla. Cr. 222; cf. *Commonwealth v. McCafferty*, 145 Mass. 384; *Fifth Avenue Coach Co. v. New York*, 194 N. Y. 19; *Denny v. Muncie*, 197 Ind. 28; *Stevens Point v. Bocksbaum*, 225 Wis. 373; *Sproles v. Binford*, 286 U. S. 374; *Chicago Park District v. Lattipee*, 364 Ill. 182; *Garneau v. Eggers*, 113 N. J. L. 245; *Wilbur v. Newton*, 16 N. E. 2d 86. See *Thomas v. Casey*, 121 N. J. L. 185.

Jersey City has properly enacted its ordinance requiring that a permit be obtained, issuable in the discretion of the Commissioner of Public Safety, where no riot, disorder or disorderly assemblage is likely to ensue from

the holding of such meeting. *Davis v. Commonwealth*, 167 U. S. 43; s. c. 162 Mass. 510; cf. *Bradley v. Public Utilities Comm'n*, 289 U. S. 92, 95; *Allen & Reed, Inc. v. Presbrey*, 50 R. I. 53, 56.

Near v. Minnesota, 283 U. S. 697, and kindred cases are not applicable and do not overrule or modify the *Davis* decision. *Lovell v. Griffin*, 303 U. S. 444, makes clear that the prevention of disorder is a proper, constitutional test. In that case it was merely held that there is freedom to distribute written matter in whatever orderly manner may be necessary or expedient for the purpose. The distribution there in question was of a religious tract. This kind of distribution is commonly from house to house, only incidentally involving use of the streets. And even were it on the street, there was no indication that such distribution would involve an expropriation of the entire street area such as ordinarily ensues when a mass meeting is there held, with its obstruction of traffic, littering of streets, and general disorder, if not riot. The clear implication from that case is that maintenance of public order is a proper ground for regulation.

If the right of free speech and assembly is sought to be exercised in public streets and places in conflict with the right of the public at large to free and untrammelled use of such places, and in contravention of the discretion of the public officials entrusted with their administration, the right is necessarily dissipated; not because it is any the less intrinsically a fundamental right, but because, under the circumstances, its exercise becomes a perversion, and an invasion of the rights of the community generally. The liberty referred to in the Fourteenth Amendment, is, in the language of Mr. Justice Cardozo in *Palko v. Connecticut*, 302 U. S. 319, 325, "a concept of ordered liberty." Distinguishing *DeJonge v. Oregon*, 299 U. S. 353.

307 U. S.

Argument for Petitioners.

The doctrine of unconstitutional conditions is not properly applicable to the present situation. Distinguishing *Frost v. Railroad Commission*, 271 U. S. 583; *Michigan Commission v. Duke*, 266 U. S. 570.

The weight of authority is in accord with the decision in *Davis v. Commonwealth*, *supra*.

In accord with the *Davis* case: *People ex rel. Doyle v. Atwell*, 232 N. Y. 96; *People v. Smith*, 263 N. Y. 255; *Duquesne v. Fincke*, 269 Pa. 112; *Wilson v. Eureka*, 173 U. S. 32; *State ex rel. Liberman v. Van De Carr*, 199 U. S. 552; *Barker v. Commonwealth*, 19 Pa. 412; *Commonwealth v. Egan*, 113 Pa. Super. 375; *Fitts v. Atlanta*, 121 Ga. 567; *Bloomington v. Richardson*, 38 Ill. App. 60; *Love v. Phelan*, 128 Mich. 545; *Tacoma v. Roe*, 190 Wash. 444; *State v. Sugarman*, 126 Minn. 477, 479; *Benson v. Norfolk*, 163 Va. 1037; *Coughlin v. Chicago Park District*, 364 Ill. 90.

As for public meetings in parks, there is no proof of discrimination in the record. Furthermore, such a use is repugnant to the uses to which the parks are dedicated,—namely, recreation and refreshment of the people. *Davis v. Commonwealth*, *supra*; *Coughlin v. Chicago Park District*, *supra*; *Commonwealth v. Abrahams*, 156 Mass. 57, 60; *Williams v. Gallatin*, 229 N. Y. 248, 253, 254. See also *Williams v. Hylan*, 223 App. Div. 48, affirmed, 248 N. Y. 616; *In re Central Parkway, City of Schenectady*, 140 Misc. 727; *Dieppe Corp. v. City of New York*, 246 App. Div. 279.

Under the New Jersey law as expressed in the case of *West v. Monmouth Beach*, 107 N. J. L. 445, a diversion of park property by a municipality for any purpose not expressly sanctioned by statute, is illegal. The decree below disregards the rights of the residential public to peace and quiet. *Billington v. Miller*, 75 N. J. L. 415.

The Director of Public Safety did not abuse the discretion vested in him when he denied applications for

permits for street meetings. His determination can not be upset in the absence of a clear and convincing showing that there was an abuse of such discretion. *Gaines v. Thompson*, 74 U. S. 347; *Ness v. Fisher*, 223 U. S. 683; *Louisiana v. McAdoo*, 234 U. S. 627, 633; *Work v. Rives*, 267 U. S. 175, 183; *Procter & Gamble Co. v. Coe*, 96 F. 2d 518, 520; *Garneau v. Eggers*, 113 N. J. L. 245; *Sullivan v. Shaw*, 6 F. Supp. 112.

The injunction is vague, uncertain and impracticable. *National Labor Relations Board v. Bell Gas & Oil Co.*, 98 F. 2d 405, 406; *Evening Times Printing & Publishing Co. v. American Newspaper Guild*, 124 N. J. Eq. 71, 75; *Collins v. Wayne Iron Works*, 227 Pa. 326. See *Louisville v. Lougher*, 209 Ky. 299; *Robert E. Hicks Corp. v. National Salesmen's Training Assn.*, 19 F. 2d 963, 965; *Ex parte Heffron*, 179 Mo. App. 639; *Magel v. Gruetli Benevolent Society*, 203 Mo. App. 335; *Fort Worth Acid Works v. Fort Worth*, 248 S. W. 822; *Ballantine v. Webb*, 84 Mich. 38; *Earl v. Brewer*, 248 App. Div. 314; *Lone Star Salt Co. v. Blount*, 49 Tex. Civ. App. 138; *L. H. Henry & Sons v. Rhinesmith*, 219 Iowa 1088, 1093.

The vagueness of the decree has the effect of preventing petitioners, at peril of criminal liability, from drafting a new ordinance.

No proof of the value of the matters in controversy was offered. Therefore there was no jurisdiction under Jud. Code § 24 (1). The rights claimed did not have a pecuniary value or consequence, *i. e.*, calculable in money and immediately, not remotely or contingently, dependent on the litigation. *Smith v. Adams*, 130 U. S. 167, 175; *Wheless v. St. Louis*, 180 U. S. 379, 382; *Kurtz v. Moffitt*, 115 U. S. 487; *Barry v. Mercein*, 5 How. 103, 120; *Oregon R. & Nav. Co. v. Shell*, 125 F. 979; *Greenough v. Independence Lead Mines Co.*, 45 F. 2d 659, 660; *Healy v. Ratta*, 292 U. S. 263; *Youngstown Bank v. Hughes*, 106 U. S. 523; *New England Mortgage Security Co. v. Gay*,

307 U. S.

Argument for Petitioners.

145 U. S. 123; *Elliott v. Empire Natural Gas Co.*, 4 F. 2d 493, 500.

Wiley v. Sinkler, 179 U. S. 58 and *Nixon v. Herndon*, 273 U. S. 536, dealt with common law action for damages due to interference with the right to vote. The broad proposition that any social, political or civil rights are presumably of a value in excess of \$3,000 would render needless several of the other subdivisions of § 24, such as (12) and (14), which dispense with the jurisdictional minimum in certain specific types of action for particular civil deprivations. *Smith v. Adams*, 130 U. S. 167; *Ohio v. Cox*, 257 F. 334.

In *Truax v. Raich*, 239 U. S. 33, jurisdiction was assumed without reference to the amount in controversy, because of the interference with rights secured by laws of the United States providing for equal rights of all persons within the jurisdiction of the United States, under the predecessor section to Jud. Code, § 24 (14), which is one of the fixed exceptions to the requirement of a showing of jurisdictional amount. See *Marcus Brown Holding Co. v. Pollak*, 272 F. 137.

Distinguishing *International News Service v. Associated Press*, 248 U. S. 215; *KVOS v. Associated Press*, 299 U. S. 269, 279.

In a proceeding in the federal courts, where a requirement of jurisdictional minimum is necessary, the right of freedom from unlawful incarceration is not, *per se*, a right susceptible of pecuniary valuation for jurisdictional purposes. *Kurtz v. Moffitt*, *supra*; *Barry v. Mercein*, *supra*. The rule of presumptive jurisdictional amount applies only in a technical action at law for damages for false imprisonment. *Hynes v. Briggs*, 41 F. 468.

The claim that the bill alleges a "conspiracy," presumptively within the jurisdictional minimum, is without merit.

The rights involved are not "secured" by the Constitution, within Jud. Code § 24 (14). On the contrary, they are fundamental rights having their inception in the several States before the adoption of the Constitution and are merely guaranteed by it, or by the Fourteenth Amendment as judicially construed, from invasion by the States. *Slaughter House Cases*, 16 Wall. 36; *United States v. Cruikshank*, 92 U. S. 542; *United States v. Wheeler*, 254 U. S. 281; *United States v. Langes*, 48 F. 78; 144 U. S. 310; *Holt v. Indiana Mfg. Co.*, 176 U. S. 68; *Simpson v. Geary*, 204 F. 507; *Marcus Brown Holding Co. v. Pollak*, *supra*, 141; *Gobitis v. Minersville School District*, 21 F. Supp. 581.

Privileges and immunities protected by the Fourteenth Amendment are those that belong to citizens of the United States as such, as contrasted with those derived from other sources, and the clear intent of subdivision (14) is limited to those rights strictly which fall within the privileges and immunities clause or other provisions of the Constitution proper. Distinguishing *Smith v. United States*, 157 F. 721, 724, 725. The word "secured" in subdivision (14) is used as a word of art.

The claimed right of peaceable assembly is not a right secured by the Federal Constitution. *United States v. Cruikshank*, *supra*; *DeJonge v. Oregon*, *supra*, 364.

The rights of free speech and a free press were attributes of national citizenship before the Fourteenth Amendment. *Patterson v. Colorado*, 205 U. S. 454, 464 (dissent). The right of free speech was one of those fundamental rights brought into the Colonies from England antedating the Federal Constitution. 4 Blackstone's Comm. 151, 152; 4 Madison's Wks. 543, Report on the Virginia Resolutions.

As for freedom from unreasonable searches and seizures, from physical molestation or detention unless in pursuance of a lawful arrest accompanied by immediate

307 U. S.

Argument for Petitioners.

arraignment, and from forcible removal or deportation from one State to another, it is elementary that the first two of these are protected by the Federal Constitution only against invasion by Congress. So far as unlawful acts in these respects by state officers are concerned, the remedies are exclusively a matter of state action.

The right to be immune from the alleged deportations is not a privilege or immunity secured to a United States citizen, within the conspiracy statute construed by the Court in *United States v. Cruikshank*, *supra*; *United States v. Wheeler*, 254 U. S. 281, affirming 254 F. 611. Of course, state action of the nature complained of might call for federal protection within Art. IV, § 2 of the Federal Constitution, as constituting a denial to citizens of other States of rights and privileges of citizens of New Jersey, 254 U. S. 299; *United States v. Harris*, 106 U. S. 629, 645.

The rights involved in this case are in no instance secured by any law of the United States providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States, and therefore no such law brings them within the alternative provisions of Jud. Code § 24 (14).

Jurisdiction can not be derived from Jud. Code, § 24 (12).

The equal protection clause of the Fourteenth Amendment constitutes no basis for jurisdiction under (14). *United States v. Cruikshank*, *supra*, 554; 1 Woods 308, 314-316; *Logan v. United States*, 144 U. S. 263; *Holt v. Indiana Mfg. Co.*, *supra*; *State v. Leavitt*, 105 Me. 76, 83. Distinguishing *Truax v. Raich*, 239 U. S. 33.

Article IV, § 2 of the Constitution does not create a basis for jurisdiction under subdivision (14). *Corfield v. Coryell*, 4 Wash. 371, 380; *Slaughter House Cases*, 16 Wall. 36, 77; *Hamilton v. University of California*, 293 U. S. 245; *Marcus Brown Holding Co. v. Pollak*, 272 F.

137. Such rights as may be said to flow from Art. IV, § 2, do not arise from the Constitution and laws of the United States as contrasted with those that spring from other sources.

The alleged deprivation of the "privilege," under the Fourteenth Amendment, of passing freely from State to State is no basis for jurisdiction under subdivision (14). Jurisdiction can not flow from the commerce clause and the Interstate Commerce Act.

Those respondents which are artificial entities have no constitutional rights, either under the "liberty" concept of the due process clause, or under the "privileges and immunities" clause of the Fourteenth Amendment.

No case is made for jurisdiction under Jud. Code § 24 (14) as to the individual respondents, since there is no allegation or proof that any of them ever made any attempt either to secure a permit, or to hold a meeting on the public streets.

Jud. Code, § 24 (14) deals with deprivation of certain rights under color of a statute, law, ordinance, etc., of any State, and therefore does not extend to such of the respondents' grievances as were not imputable to the State of New Jersey. Nor may jurisdiction be predicated under Jud. Code, § 24 (1) (dealing with controversies arising under the Constitution and laws of the United States) so far as grievances are based upon deprivations under the Fourteenth Amendment, since that Amendment is likewise limited to state action.

Messrs. Morris L. Ernst and Spaulding Frazer, with whom *Messrs. Lee Pressman and Benjamin Kaplan* were on the brief, for respondents.

The Jersey City policy of deportation violates the privileges and immunities clause of the Fourteenth Amendment.

307 U. S.

Argument for Respondents.

Freedom to pass without molestation throughout the United States is an attribute of national citizenship protected against state interference.

The policy of deportation likewise offends against the interstate commerce clause.

It violates the due process clause of the Fourteenth Amendment, as does the policy respecting search and seizure. The New Jersey Constitution forbids such unreasonable searches and seizures. As the unlawful searches and seizures are part of a scheme or conspiracy hostile to federal constitutional guaranties, jurisdiction to enjoin them would exist in any event.

Police interference with peaceful picketing violates due process. In any event, there must be arrest and fair trial.

The municipal ordinances are void. *Lovell v. Griffin*, 303 U. S. 444. Distribution of literature is the substance of the right of free press so far as labor unions are concerned. The Jersey City ordinances, unlike that of the City of Griffin, are absolute prohibitions, not merely previous restraints by license or permit.

The standard of anticipated disorder is unconstitutional. It was unconstitutionally applied to the respondents.

The concurrent findings of arbitrary and discriminatory enforcement are supported by ample evidence. Respondents could obtain no private halls in Jersey City. If the public places of the City were denied them, they would be without a voice in the City.

The standard set up by the ordinance imposes a previous restraint and is void. Freedom of speech and of the press are secured by the due process clause of the Fourteenth Amendment against invasion by the States and their governmental agencies. *Near v. Minnesota*, 283 U. S. 697, 707; *DeJonge v. Oregon*, 299 U. S. 353,

364; *Lovell v. Griffin*, 303 U. S. 444, 450. And just as freedom of the press embraces the right to circulate as well as the right to publish (*Lovell v. Griffin, supra*), so freedom of speech embraces the right to address an audience as well as the right merely to talk. See *Whitney v. California*, 274 U. S. 357; *DeJonge v. Oregon, supra*; and *Palko v. Connecticut*, 302 U. S. 319, 324.

Primarily, freedom of speech and freedom of the press mean freedom from previous restraint.

Under the ordinance a man may be forbidden in advance the right to address the public on the ground that his words will, in the opinion of the Director of Public Safety, provoke disorder. Under the Constitution a speaker may not be barred upon a guess that he will be lawless, or that others will be lawless and riot in resentment against him or what he may choose to say.

The respondents do not contend that there is, nor did the courts below find, any constitutional or social objection to the requirement of permits for public meetings. Permits must be applied for three days in advance; so said the ordinance and so says the decree. The City is thus given notice of the gatherings that are to be held, and is enabled to take whatever precautions it deems necessary. Furthermore, under the decree, the City is properly given the right to refuse permits on the ground of traffic conditions or conflicting recreational schedules—to this extent the exercise of the right of free speech is reasonably accommodated to other uses of the streets and parks. What petitioners are precluded from doing is anticipating a riot before the applicant has opened his mouth, and denying him the right to speak in public places on the basis of such a guess. *Near v. Minnesota, supra*; *Dearborn Pub. Co. v. Fitzgerald*, 271 F. 479; *American League of the Friends of New Germany v. Eastmead*, 116 N. J. Eq. 487; *Hudson County Committee v. Hague*, N. J. Chancery, Jan. 19, 1937.

307 U. S.

Argument for Respondents.

Undoubtedly general police regulations having nothing to do with speech or the press as such are not considered to be previous restraints. Thus ordinances and statutes may constitutionally be passed, which require that permits be obtained from the building, health and fire departments before a building is used to house a newspaper plant. Newspapers may likewise be compelled to pay a social security tax, to enter into collective bargaining with their employees, and the like. *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 132-133.

These regulations find their origin, not in the subject matter of the constitutional guaranty, but in the exigencies of communal life which make general rules on fire, sanitation and the like indispensable. These rules, because they have no relation whatever to the impartial distribution of the written word as such, are not regarded as previous restraints. The same reasoning applies to the right of speech; a speaker, like a newspaper, has no special immunity from the application of general laws. Certainly a speaker may be required to conform with non-discriminatory regulations based on traffic conditions and proper regard for public recreation other than public meetings. *Anderson v. Wellington*, 40 Kan. 173, 180.

Davis v. Massachusetts, 167 U. S. 43, is not in point here, and in any event does not represent good law today.

In so far as the ordinance in the *Davis* case required that a permit be obtained, there could be no constitutional objection to it. The fact that *Davis* spoke without even applying for a permit marks one controlling distinction between that case and the present. Moreover, unlike the Jersey City ordinance, which conditions refusal of permits upon an anticipation of disorder, the Boston ordinance did not in terms prescribe any standard for refusal. This Court naturally assumed that in enforcing it the administrative authority was free to apply constitutional criteria,

such as traffic conditions, etc., and had done so. The present ordinance leaves the official no room for applying a constitutional standard.

The *Davis* case does not qualify or rebut the conclusion that the standard of anticipated disorder is unconstitutional. It is a holding that the right to speak may be constitutionally conditioned—a point which is conceded. This Court took the view that Davis had been validly convicted and punished because he violated a law which could have been constitutionally applied (and Davis made no effort to show that it had been unconstitutionally applied as to him). Distg. *People ex rel. Doyle v. Atwell*, 232 N. Y. 96; *People v. Smith*, 263 N. Y. 255; *Duquesne v. Fincke*, 269 Pa. 112.

The decision in the *Davis* case is inconsistent with more recent authorities.

In England the use of public places for speaking purposes is taken for granted. *Cobbett's Case*, 29 How. St. Trials 49 (1804); *Liberty of the Press, Speech and Public Worship*, (1800) by James Paterson; A. V. Dicey, *The Law of the Constitution*, (1915, 8th ed.). Of course, the right may not be exercised at all times in all places. Highways may not be rendered useless or public squares be clogged by public assemblages. *R. v. Carlile*, 6 C. & P. 636; *Ex parte Lewis*, 21 Q. B. D. 191. See Jennings, *The Law and the Constitution* (1933), p. 242. Public parks may not be cluttered with public meetings. But the necessity that there be some adequate places where the right can be exercised has never been questioned. Paterson, *op cit.*, *supra*, 23; Dicey, *op. cit.*, *supra*, 498.

The rights of free speech and free assembly are essential parts of American heritage. Traditionally in the United States, freedom of speech means freedom to speak in public places. *State v. Butterworth*, 104 N. J. L. 579, 581, reversing 104 N. J. L. 43. Obviously, cases sustaining license ordinances do not hold that the municipality

307 U. S.

Argument for Respondents.

could prohibit public speaking entirely. They establish only that licenses may be required if proper criteria for their issuance are adhered to. Of such a nature are the *Davis, Atwell, Smith, Fincke* and other cases relied upon by the petitioners. See, also, *State v. Coleman*, 96 Conn. 190; *Anderson v. Tedford*, 85 So. 673; *Bloomington v. Richardson*, 38 Ill. App. 60; *Rich v. Naperville*, 42 Ill. App. 222; *Chicago v. Trotter*, 136 Ill. 430, 433; *Anderson v. Wellington*, 40 Kan. 173, 178; *Matter of Frasee*, 63 Mich. 396, 405; *State ex rel. Garrabad v. Dering*, 84 Wisc. 585, 594-5.

Viewed even as a general police regulation (as distinguished from a previous restraint prohibited under any circumstances), the ordinance is void because unreasonable in the light of the underlying facts, which in this instance demonstrate the lack of necessity for conditioning the right to speak in public places upon prevision of disorder. See *Whitney v. California*, 274 U. S. 357.

The ordinance has been so applied to and enforced against the respondents as to violate the equal protection and due process clauses of the Fourteenth Amendment.

Jurisdiction existed under Jud. Code § 24 (1). The concurrent findings of minimal amount as a fact should not be disturbed.

In cases seeking injunctive relief, the value in dispute is that of the object of the bill. The value of social or political rights is presumptively in excess of the jurisdictional amount. *McNichols v. International Typ. Union*, 21 F. 2d 497, 498.

The rights of which respondents were deprived were by them attempted to be exercised in pursuance of a federally declared policy incorporated in the National Labor Relations Act (29 U. S. C. §§ 151-166).

Denial of the rights here involved meant destruction of the opportunity to work or to pursue a calling. That such rights have an economic aspect is settled by *Truax v.*

Raich, 239 U. S. 33. See also *International News Service v. Associated Press*, 248 U. S. 215, 236.

Had respondents brought actions for damages on the law side, each could in good faith have alleged compensatory and exemplary damages in excess of \$3,000 and jurisdiction would have definitely attached. *Barry v. Edmunds*, 116 U. S. 550; *Ragsdale v. Rudick*, 293 F. 182. See *Hynes v. Briggs*, 41 F. 468.

It is immaterial that respondents joined in a suit to restrain the repeated and continuous trespasses and other tortious acts rather than filed actions for damages. They sought to vindicate their right to be free from unlawful interferences, and the value of that right is determinative of amount in controversy. Past acts and future or threatened probabilities enter into such calculation. *Fidler v. Roberts*, 41 F. 2d 305.

The rule of aggregation to establish jurisdictional amount is applicable. *Troy Bank v. Whitehead*, 222 U. S. 39; *International News Service v. Associated Press*, *supra*; *Local No. 7 B. M. P. I. U. v. Bowen*, 278 F. 271; *Local Union A. A. S. E. R. E. v. Joplin & P. R. Co.*, 287 F. 473; *Sovereign Camp v. O'Neill*, 266 U. S. 292.

Rights distinctively civil in character are "secured" by each of the three principal clauses of the first section of the Fourteenth Amendment. Jud. Code § 24 (14) and 8 U. S. C. § 43 cover the rights so secured. *Raich v. Truax*, 219 F. 273; affirmed 239 U. S. 33; *Giles v. Harris*, 189 U. S. 475; *Nixon v. Herndon*, 273 U. S. 536; *Holt v. Indiana Mfg. Co.*, 176 U. S. 68; *Crane v. Johnson*, 233 F. 334, affirmed 242 U. S. 339. [Citing many cases in the lower federal courts.]

Thus the right of free passage through the United States is secured by the privileges or immunities clause and the due process clause; the right to be free of physical restraint without arrest according to law, etc., is secured by the due process clause; the right to be free of

307 U. S.

Argument for Respondents.

unreasonable search and seizure is secured by the due process clause (and perhaps also by the privileges or immunities clause); the rights of free speech, free press and peaceable assembly are secured by the due process clause (and perhaps also by the privileges or immunities clause). To the extent that discrimination was shown—and discrimination pervades the case and the findings—the equal protection clause is also involved.

Since *Gitlow v. New York*, 268 U. S. 652, and *Fiske v. Kansas*, 274 U. S. 380, it is no longer open to question that these civil rights are as much within the ambit of the due process clause as vested rights of property, which were likewise brought within this clause only as the result of a lengthy and tortuous development. See *Allgeyer v. Louisiana*, 165 U. S. 578.

The contention that the provisions of the Civil Rights Act cover only such rights protected by the Fourteenth Amendment as originated in or were created by provisions of the Constitution other than the Fourteenth Amendment itself—thus confining the provisions of the Civil Rights Act to so-called rights of national citizenship and unwarrantably reading the word “secured” in the Civil Rights Act as meaning “created,”—is erroneous.

Slaughter House Cases, 16 Wall. 36, and *United States v. Cruikshank*, 92 U. S. 542, reflect a narrow view of the scope of the Fourteenth Amendment long since discountenanced by this Court.

As to the due process clause, rights of property are now plainly protected. See *Butchers Union Slaughter-House Co. v. Crescent City Slaughter-House Co.*, 111 U. S. 746; *Barbier v. Connolly*, 113 U. S. 27; *Mugler v. Kansas*, 123 U. S. 623; *Powell v. Pennsylvania*, 127 U. S. 678; *Minneapolis & St. Louis Ry. v. Beckwith*, 129 U. S. 26; Pound, *Liberty of Contract*, 18 Yale L. J. 454, 470. It covers also the civil rights involved in this case. See *Gitlow v. New York*, 268 U. S. 652; *Fiske v. Kansas*, 274 U. S.

380; *Near v. Minnesota*, 283 U. S. 697; *Lovell v. Griffin*, 303 U. S. 444; *DeJonge v. Oregon*, 299 U. S. 353; Warren, *The New Liberty under the Fourteenth Amendment*, 39 Harv. L. R. 431. As for the equal protection clause, it is obvious that the majority opinion in the *Slaughter House Cases* has been entirely superseded. As for the privileges or immunities clause, it is still of indefinite intent, although it seems due for extension in view of *Colgate v. Harvey*, 296 U. S. 404; but it has always been understood as including the right of free passage throughout the United States.

Compare *Slaughter House Cases* and *Weaver v. Palmer Bros. Co.*, 270 U. S. 402; *Liggett Co. v. Baldridge*, 278 U. S. 105.

There is no conceivable basis in the authorities upon which the petitioners principally rely, for their conception that rights protected by the Fourteenth Amendment may be summarily categorized as, on the one hand, rights "secured" because originating in or created by other provisions of the Constitution and thereupon guaranteed by the Fourteenth Amendment (rights of national citizenship), and, on the other hand, rights not "secured" because not originating in or created by other provisions of the Constitution, but nonetheless guaranteed by the Fourteenth Amendment. The purported distinction rests, as we have seen, only on early cases declaring that rights other than those of national citizenship were in no sense protected by the Fourteenth Amendment and these cases are no longer good law. As the Fourteenth Amendment now protects and guarantees both kinds of rights (assuming that any distinction whatever can be sensibly made), it "secures" them; and by the same token they are covered by the Civil Rights Act. Distinguishing *Holt v. Indiana Co.*, 176 U. S. 68; *Marcus Brown Holding Co. v. Pollak*, 272 F. 137; *Gobitis v. Minersville School District*, 21 F. Supp. 581.

307 U.S.

Argument for Respondents.

The civil rights here in issue are secured by the Fourteenth Amendment (and therefore by the Civil Rights Act) in the simple sense that, whereas in the absence of the Amendment a State could impair those rights with impunity so far as the federal Constitution was concerned, they are by the Amendment forbidden to do so. See *Smith v. United States*, 157 F. 721, cert. den., 208 U. S. 618.

The rights are "created" by the Fourteenth Amendment in the sense that the Amendment created a new set of sanctions to protect against their invasion.

The rights are created by the First Amendment (possibly also the Fourth). Certainly the rights created by the Bill of Rights were new rights freshly granted or created, since the national Government whose power they effectively limited, was a new entity. The fact that the Fourteenth Amendment, as judicially construed, affords additional protection to the same basic rights, does not militate against the fact that the First Amendment created them.

Jurisdiction existed under § 24 (12) of the Judicial Code (conspiracy respecting civil rights).

All of petitioners' actions constituted state action.

The status of the respondent American Civil Liberties Union (a corporation) and the unincorporated labor unions was correctly adjudged below. The American Civil Liberties Union, is not a business corporation but a membership corporation which reflects the interests of its individual members. Cf. *KVOS, Inc. v. Associated Press*, 299 U. S. 269, 279. A ruling that corporations are not entitled to the benefit of the liberty clause of the Fourteenth Amendment so far as freedom of speech and press are concerned would be unthinkable. See *Grosjean v. American Press Co.*, 297 U. S. 233, and *West Coast Hotel Co. v. Parrish*, 300 U. S. 379.

Corporations are as much entitled to equal protection as are natural persons. *Liggett Co. v. Lee*, 288 U. S. 517, 536; *Southern Railroad Co. v. Greene*, 216 U. S. 400; *Kentucky Finance Corp. v. Paramount Auto Exchange Corp.*, 262 U. S. 544; *Power Manufacturing Co. v. Saunders*, 274 U. S. 490; *Liggett Co. v. Baldrige*, 278 U. S. 105; and *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239.

As for the standing of unincorporated labor associations: *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344; *Hansel v. Purnell*, 1 F. 2d 266, 269, cert. den., 266 U. S. 617.

The decree is definite, practicable and enforceable.

From the brief of the Committee on the Bill of Rights,* of the American Bar Association:

The course of conduct of the city officials, as revealed by the findings in this record, constitutes a serious abridgment of the constitutional right "peaceably to assemble" of so deliberate and important a character as to be of national consequence.

The refusal of the permits for the meetings in this case was clearly on the ground that the persons desiring to speak were unpopular in Jersey City and that the sentiments they might utter would be unpopular. If the law should ever countenance the suppression of free speech on the basis of the inacceptability to the prevailing majority opinion of the speakers or their sentiments, the very basis of the doctrines on which our institutions are built would be destroyed.

*The gentlemen who composed the Committee were: Messrs. Douglas Arant, of Alabama; Zechariah Chafee, Jr., of Rhode Island; Grenville Clark, of New York; Osmer C. Fitts, of Vermont; Lloyd K. Garrison, of Wisconsin; George I. Haight, of Illinois; Monte M. Lemann, of Louisiana; Ross L. Malone, Jr., of New Mexico; Burton W. Musser, of Utah; John Francis Neylan, of California; Joseph A. Padway, of Wisconsin; and Charles P. Taft, of Ohio.

307 U. S.

Argument for Amici Curiae.

Freedom of assembly is an essential element of the American democratic system. The decree below is in accord with the modern doctrine of this Court in its interpretation of the constitutional guaranties.

Although none of the recent cases (*Fiske v. Kansas*, 274 U. S. 380; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Grosjean v. American Press Co.*, 297 U. S. 233; *Herndon v. Lowry*, 301 U. S. 242; *Lovell v. Griffin*, 303 U. S. 444) deals specifically with the subject of interference with freedom of assembly through the denial of permits for outdoor meetings, nevertheless the denial by this method of the right of assembly is closely analogous to the suppression of unpopular meetings by criminal prosecutions, which was held invalid in *DeJonge v. Oregon*, 299 U. S. 353.

The ordinance has been unconstitutionally administered. Permits were denied because of threatened disorder without reference to the possibility of controlling such disorder. Some danger of disorder must be faced for the sake of the constitutional right of free assembly. It is natural that threats of trouble should often accompany meetings on controversial questions. But meetings may not be suppressed on that account. The practice under ordinary conditions in our large cities is for the authorities to arrange with the applicants to have the meeting held in a suitable place, and to have enough policemen on hand to quell apprehended disturbances.

The real question at issue is whether any threat of disorder, even though only by opponents of the speakers, excuses denial of permits. If so, the right of free assembly will have become a mockery. The right would thus be subject to destruction by an arbitrary official decision, notwithstanding that the Bill of Rights was intended to protect citizens from arbitrary action of that very character.

To "secure" the rights of free speech and assembly against "abridgment," it is essential not to yield to threats of disorder. Otherwise these rights of the people to meet and of speakers to address the citizens so gathered, could not merely be "abridged" but could be destroyed by the action of a small minority of persons hostile to the speaker or to the views he would be likely to express.

The essential ground upon which the Circuit Court of Appeals held this ordinance void on its face appears to have been that the ordinance by its very terms contains an unconstitutional standard for the guidance of the licensing officer. The court did not deny that any ordinance merely requiring an application to be made to a city official for a permit, or giving the official a reasonable discretion as to the time or place of the meeting in order to allow for traffic or recreational conditions, would have been valid. It evidently considered that an ordinance which by its terms contemplates the refusal of a permit merely because, in the opinion of the licensing official, disorder is probable, without regard to a city's ability to prevent or suppress the disorder, is void *per se*.

As a practical matter a city has a virtual monopoly of every open space at which a considerable outdoor meeting can be held, and if its streets and parks may be entirely closed to such meetings, the practical result would be to abolish them.

A statesmanlike and workable approach would be to regard the availability of streets and parks as but two parts of a single problem which should be handled as a unit. This problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other basic obligation to provide adequate places for public discussion in order to safeguard the guaranteed right of public assembly.

307 U. S.

Argument for Amici Curiae.

It would seem that if a city adopted the policy of providing an adequate number of places similar to Hyde Park in London, to be used exclusively for outdoor meetings, it might constitutionally close both its streets and ordinary parks to such meetings if, in the judgment of the city authorities, the requirements of traffic and recreation made this advisable. It is true that under usual conditions in an average large city it is perfectly feasible to find some suitable places for meetings even in streets; yet it is conceivable that under extraordinary conditions, the necessities of traffic would make all the streets unsuitable, at least temporarily. In another city it might be that the parks are unsuitable under certain conditions and at particular times, while proper places for meetings could readily be provided in squares or wide streets. It may well develop that the most feasible solution of this problem in many cities will be the establishment of "Hyde Parks" of sufficient number and so located as to provide effectively for free outdoor public discussion.

The sound constitutional doctrine which should control this problem is that a city must in some adequate manner provide places on its property for public meetings—as distinguished from a more rigid doctrine that would compel both its streets and its ordinary parks to be made available. Under such a doctrine, the basic constitutional requirement of protecting freedom of assembly would be fulfilled, but without imposing rigid specific requirements as to either streets or parks that might in practice prove difficult or unworkable.

Thus, while we stress the vital importance of upholding the principle that a city must safeguard the right of assembly in open-air meetings, we also suggest that in respect of ways and means to that end, the rule should be reasonably flexible.

Davis v. Massachusetts, 167 U. S. 43, relied upon by defendants, is distinguishable in respect of its facts and

the issue involved. Moreover, its rationale is incompatible with more recent decisions of this Court. A city does not control its parks like a private owner of property, but holds them for public purposes including public meetings. The right of a city in respect of its parks resembles other governmental rights in that it must be administered for the benefit of the public and not in an arbitrary manner. There are many different kinds of public benefits to be derived from parks, and one of the most important is the constitutional right of assembly therein. The parks are held by the city subject to this right. It can be regulated in a reasonable manner; it must not be denied.