ADAMS *v.* TANNER, *244 U.S. 590* (1917)

37 S.Ct. 662

ADAMS ET AL. *v.* TANNER, ATTORNEY GENERAL OF THE STATE OF WASHINGTON, ET

AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT

OF WASHINGTON.

No. 273.

Argued May 7, 1917.

Decided June 11, 1917.

The business of securing honest work for the unemployed in return for an agreed consideration is a useful and legitimate business which, though subject to regulation under the state police power, cannot be forbidden by an act of a State without violating the guaranty of liberty secured by the Fourteenth Amendment.

A law forbidding employment agents from receiving fees from the workers for whom they find places in effect destroys their occupation as agents for workers, and cannot be sustained upon the ground that the fees may be charged against employers.

Washington Initiative Measure Number 8 (popularly known as "The Employment Agency Law,") as construed by the Supreme Court of the State, is contrary to the Fourteenth Amendment.
Decree of the District Court reversed.[fn1]

[fn1] Page 590
By an order of the District Court, the majority and minority opinions in *Wiseman* v. *Tanner*, 221 F. 694, were adopted in this case.

THE case is stated in the opinion.

Mr. Dallas V. Halverstadt, with whom *Mr. Samuel H. Piles*, *Mr. Edward J. Cannon* and *Mr. George Ferris* were on the briefs, for appellants.

Mr. L.L. Thompson, Assistant Attorney General of the State of Washington, with whom *Mr. W.V. Tanner*, Attorney General of the State of Washington, was on the brief, for appellees.
Page 591

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

Initiative Measure Number 8 — popularly known as "The Employment Agency Law" — having been submitted to the people of Washington at the general election, received a majority vote and was thereafter declared a law, effective December 3, 1914, as provided by the state constitution. (Laws of Washington, 1915, 1.) It follows:

"Be it enacted by the People of the State of Washington:

"Section 1. The welfare of the State of Washington depends on the welfare of its workers and demands that they be protected from conditions that result in their being liable to imposition and extortion.

"The State of Washington therefore exercising herein its

police and sovereign power declares that the system of collecting fees from the workers for furnishing them with employment, or with information leading thereto, results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state.

"Section 2. It shall be unlawful for any employment agent, his representative, or any other person to demand or receive either directly or indirectly from any person seeking employment, or from any person on his or her behalf, any remuneration or fee whatsoever for furnishing him or her with employment or with information leading thereto.

"Section 3. For each and every violation of any of the provisions of this act the penalty shall be a fine of not more than one hundred dollars and imprisonment for not more than thirty days."

In *Huntworth* v. *Tanner*, 87 Wn. 670, the Supreme Court held school teachers were not "workers" within the quoted measure and that it did not apply to one conducting an agency patronized only by such teachers

and their employers. And in *State* v. *Rossman*, 93 Wn. 530, the same court declared it did not in fact prohibit employment agencies since they might charge fees against persons wishing to hire laborers; that it was a valid exercise of state power; that a stenographer and bookkeeper is a "worker"; and that one who charged him a fee for furnishing information leading to employment violated the law.

As members of co-partnerships and under municipal licenses, during the year 1914 and before, appellants were carrying on in the City of Spokane well established agencies for securing employment for patrons who paid fees therefor. November 25, 1914, in the United States District Court, they filed their original bill against W.V. Tanner, Attorney General of the State, and George H. Crandall, Prosecuting Attorney for Spokane County, asking that Initiative Measure Number 8 be declared void because in conflict with the Fourteenth Amendment, Federal Constitution,

and that the defendants be perpetually enjoined from undertaking to enforce it. On the same day they presented a motion for preliminary injunction supported by affidavits which were subsequently met by countervailing ones. Appellees thereafter entered motions to dismiss the original bill because: (1) "Said bill of complaint does not state facts sufficient to warrant this court in granting any relief to the plaintiffs; (2) that plaintiffs have a plain, speedy and adequate remedy at law; (3) that this court has no jurisdiction over the persons of these defendants or either of them, or of the subject-matter of this action." A temporary injunction was denied. The motions to dismiss were sustained and a final decree to that effect followed.

Considering the doctrine affirmed in *Truax* v. *Raich*, 239 U.S. 33, and cases there cited, the record presents no serious question in respect of jurisdiction.

The bill alleges "that the employment business consists
Page 593
in securing places for persons desiring to work" and unless permitted to collect fees from those asking assistance to such end the business conducted by appellants cannot succeed and must be abandoned. We think this conclusion is obviously true. As paid agents their duty is to find places for their principals. To act in behalf of those seeking workers is another and different service, although, of course, the same individual may be engaged in both. Appellants' occupation as agent for workers cannot exist unless the latter pay for what they receive. **To say it is not prohibited because fees may be collected for something done in behalf of other principals is not good reasoning. The statute is one of prohibition, not regulation. "You take my house when you do take the prop that doth sustain my house; you take my life when you do take the means whereby I live."**

We have held employment agencies are subject to police regulation and control. "The general nature of the business is such that unless regulated many persons may be exposed to misfortunes against which the Legislature can properly protect them," *Brazee* v. *Michigan*, 241 U.S. 340, 343. But we think it

plain that there is nothing inherently immoral or dangerous to public welfare in acting as paid representative of another to find a position in which he can earn an honest living. On the contrary, such service is useful, commendable, and in great demand. In *Spokane* v. *Macho*, 51 Wn. 322, 324, the Supreme Court of Washington said: "It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker, or merchant; and under the methods prevailing in the modern business world it may be said to be a necessary adjunct in the prosecution of business enterprises." Concerning the same subject, *Ex parte Dickey*, 144 Cal. 234, 236, the Supreme Court of California said: "The business in which this defendant is engaged is not only innocent and

innocuous, but is highly beneficial, as tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals." And this conclusion is fortified by the action of many States in establishing free employment agencies charged with the duty to find occupation for workers.

It is alleged: "That plaintiffs have furnished positions for approximately ninety thousand persons during the last year, and have received applications for employment from at least two hundred thousand laborers, for whom they have been unable to furnish employment. . . . That such agencies have been established and conducted for so long a time that they are now one of the necessary means whereby persons seeking employment are able to secure the same." A suggestion in behalf of the State that while a pursuit of this kind "may be beneficial to some particular individuals, or in specific cases, economically it is certainly non-useful, if not vicious, because it compels the needy and unfortunate to pay for that which they are entitled to without fee or price, that is, the right to work," while possibly indicative of the purpose held by those who originated the legislation, in reason, gives it no support.

Because abuses may, and probably do, grow up in connection

with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the
Page 595
fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

The general principles by which the validity of the challenged measure must be determined have been expressed many times in our former opinions. It will suffice to quote from a few.

In *Allgeyer* v. *Louisiana*, 165 U.S. 578, 589, we held invalid a statute of Louisiana which undertook to prohibit a citizen from contracting outside the State for insurance on his property lying therein because it violated the liberty guaranteed to him by the Fourteenth Amendment. **"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."**

"If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the

substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law." *Booth* v. *Illinois*, 184 U.S. 425, 429.

"It is also true that the police power of the State is not unlimited, and is subject to judicial review, and when
Page 596
exerted in an arbitrary or oppressive manner such laws may be annulled as violative of rights protected by the Constitution. While the courts can set aside legislative enactments upon this ground, the principles upon which such interference is warranted are as well settled as is the right of judicial interference itself. The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. . . . If there existed a condition of affairs concerning which the legislature of the State, exercising its conceded right to enact laws for the protection of the health, safety or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the act must fail." *McLean* v. *Arkansas*, 211 U.S. 539, 547, 548.

"The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many non-useful occupations, which may, or may not be harmful to the public, according to local conditions, or the manner in which

they are conducted." *Murphy* v. *California*, 225 U.S. 623, 628.

We are of opinion that Initiative Measure Number 8 as
Page 597
construed by the Supreme Court of Washington is arbitrary and oppressive, and that it unduly restricts the liberty of appellants, guaranteed by the Fourteenth Amendment, to engage in a useful business. It may not therefore be enforced against them.

The judgment of the court below is reversed and the cause remanded for further proceedings in conformity with this opinion.

Reversed.