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Constitutional Law - Federal Regulation of Lobbying Act - Vague and Indefinite Language as Violation of First and Fifth Amendment

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CONSTITUTIONAL LAW—FEDERAL REGULATION OF LOBBYING ACT—VAGUE AND INDEFINITE LANGUAGE AS VIOLATION OF FIRST AND FIFTH AMENDMENTS—Defendants were charged with violation of the Federal Regulation of Lobbying Act[1] because of failure to register as lobbyists under provisions of section 308[2] and to report expenditures as directed by section 305.[3] The lower court found these sections of the statute unconstitutional and dismissed the information. On appeal, *held,* the act is not so vague and indefinite as to violate the due process clause of the Fifth Amendment; nor does it violate the First Amendment. The penalty provision of section 310(b)[4] is not objectionable as a deprivation of First Amendment rights since it is separable.[5] *United States v. Harriss,* 347 U.S. 612, 74 S.Ct. 808 (1954).

[1] 60 Stat. L. 839, §§301-311 (1946), 2 U.S.C. (1952) §§261-270.

[2] Section 308(a): "Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress" is required to register listing his employer, amount of pay and his expense authorization.

[3] Section 305(a): "Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk" a quarterly statement listing names of contributors of over $500 and of expenditures of over $10, the totals of those contributions and expenditures not listed by name, and the totals of the contributions received and of the expenditures made on a cumulative basis for the current year.

[4] Section 310(b) provides that the person convicted shall be prohibited for three years after conviction "from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation. . . ."

[5] In National Association of Manufacturers v. McGrath, (D.C. D.C. 1952) 103 F. Supp. 510 at 514, vacated as moot, 344 U.S. 804, 73 S.Ct. 31 (1952), this provision was found "obviously unconstitutional." The Court in the principal case refused to rule on the section as it had not been applied to the defendants. In any event, since there is a specific

"The clearest feature of the Court's decision is that it leaves the country under an Act which is not much like any Act passed by Congress."[6] The Court's interpretation of the act was based on a determination that section 307[7] controls the application of sections 305 and 308. The conflicting language of coverage in section 305, which indicates that persons who merely expend money are included in its provisions, was eliminated by holding that a "person" must have solicited, collected or received contributions for the purposes designated by section 307 of the act. The phrases "principal purpose" and "to be used principally to aid," found in section 307, were extensively interpreted to mean that a substantial part of the purpose of the contribution or of the person soliciting, collecting or receiving them was all that was required to bring the person within the act. To describe the activities regulated by the act, the Court referred to the definition of lobbying found in *United States v. Rumely*,[8] thus arbitrarily restricting the covered activities to those utilizing direct communication with members of Congress by means of personal contacts or artificially stimulated letter campaigns. The language of section 307(b), "to influence, directly or indirectly, the passage or defeat of any legislation," was altered by giving no effect to part of its contents, "to influence . . . indirectly." Thus interpreted, the act specifies three prerequisites to coverage under section 307: "(1) the 'person' must have solicited, collected, or received contributions; (2) . . . one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress."[9] Its scope was thus limited to provide a reasonably sufficient guide to the actions of an individual and to adjudication by the Court, the two criteria to be applied to a criminal statute when its language is questioned as vague and indefinite.[10] Vagueness as a violation of due process is an ambiguous doctrine at best. Some of the factors which are used to find language sufficiently definite can be identified, i.e., meanings derived from the common law, through common usage, or from previous judicial and administrative interpretations,[11] the re-

penalty of fine and imprisonment defined in §310(a), the Court found no obstacle to separation.

[6] Principal case at 633, Justice Jackson dissenting.

[7] This section defines a person to whom the act is applicable as one who himself or by agent, employee or other person, "directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes: (a) The passage or defeat of any legislation by the Congress of the United States. (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

[8] 345 U.S. 41, 73 S.Ct. 543 (1953).

[9] Principal case at 623.

[10] See 62 HARV. L. REV. 77 (1948).

[11] Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618 (1939); Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U.S. 210, 52 S.Ct. 559 (1932).

quirement of willfulness or a moral wrong,[12] or application to a specific group which can properly interpret the language.[13] None of these offer a definitive answer, however, and they fail to reconcile the many decisions which interpret the vagueness criterion.[14] Recent opinions indicate a desire to affirm questionable language when it appears that the legislature has made a realistic effort to legislate in a difficult field where any regulatory provisions must necessarily be somewhat indefinite.[15] Whether the Court should indulge in consideration of social and political policy to this extent is debatable, particularly when, as in the principal case, the interpretation changes the language of the statute so as to provide inadequate notice for the individuals who were convicted for acting contrary to its provisions. Furthermore, a statute is violative of the First Amendment when its language, on its face, is so vague and indefinite that it can be construed to be contrary to the guaranties of free speech and petition of the government.[16] This requirement of definite and precise language is more stringent than the due process prohibition of vagueness.[17] The interpretation in the principal case of the act's more important sections would indicate that the Court recognized its failure to adhere to this standard. Moreover, in the future the individual must predict the applicability of the act from judicial opinion rather than from the provisions of the statute. Since the Constitution offers no protection from retroactive changes in decisional law, the vague language of this statute is a deterrent to the exercise of the right of free speech.[18] Congress admittedly has the power to require lobbyist registration, and the information obtained thereby is valuable to Congress and the public. The decision in the principal case has salvaged from the act some regulatory measures with which to require this registration. Whether the interpretation of this act leaves an efficient method of enforcing registration, especially in view of the exclusion from the act's coverage those who only expend money for lobbying purposes, remains to be established. Should this regulation be satisfactory for its purpose, it is nonetheless questionable that the Court should have so extensively rewritten the act.

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[12] Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031 (1945); Jordan v. De George, 341 U.S. 223, 71 S.Ct. 703 (1951).

[13] Omaechevarria v. Idaho, 246 U.S. 343, 38 S.Ct. 323 (1918).

[14] See 53 MICH. L. REV. 264 (1954), for a detailed discussion of the various factors which are applicable to the vagueness doctrine.

[15] United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538 (1947). See also the dissenting opinion of Justice Frankfurter in Winters v. New York, 333 U.S. 507, 68 S.Ct. 665 (1948).

[16] Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736 (1940); Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532 (1931).

[17] Winters v. New York, note 15 supra.

[18] Principal case at 635, Justice Jackson dissenting.