

Pierce Vs. Society of Sisters

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Court : US Supreme Court

Decided On : Jun-01-1925

Appeal No. : 268 U.S. 510

Appellant : Pierce

Respondent : Society of Sisters

Judgement :

Pierce v. Society of Sisters - 268 U.S. 510 (1925)

U.S. Supreme Court Pierce v. Society of Sisters, 268 U.S. 510 (1925)

Pierce v. Society of Sisters

Nos. 583, 584

Argued March 16, 17, 1925

Decided June 1, 1925

268 U.S. 510

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF OREGON

SYLLABUS

1. The fundamental theory of liberty upon which all governments of this Union rest excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. P. [268 U. S. 535](#) .

2. The Oregon Compulsory Education Act (Oreg. Ls., 5259) which, with certain exemptions, requires every parent, guardian or other person having control of a child between the ages of eight and sixteen years to send him to the public school in the district where he resides, for the period during which the school is held for the current year, is an unreasonable interference with the liberty of the parents and guardians to direct the upbringing of the children, and in that respect violates the Fourteenth Amendment. P. [268 U. S. 534](#) .

3. In a proper sense, it is true that corporations cannot claim for themselves the liberty guaranteed by the Fourteenth Amendment, and, in general, no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power by the State upon the ground that he will be deprived of patronage;

4. But where corporations owning and conducting schools are threatened with destruction of their business and property through the improper and unconstitutional compulsion exercised by this statute upon parents and guardians, their interest is direct and immediate, and entitles them to protection by injunction. *Truax v. Raich*, [239 U. S. 33](#) . P. [268 U. S. 535](#) .

5. The Act, being intended to have general application, cannot be construed in its application to such corporations as an exercise of power to amend their charters. *Berea College v. Kentucky*, [211 U. S. 45](#) . P. [268 U. S. 535](#) .

6. Where the injury threatened by an unconstitutional statute is present and real before the statute is to be effective, and will

become irreparable if relief be postponed to that time, a suit to restrain future enforcement of the statute is not premature. P. [268 U. S. 536](#) .

296 Fed. 928, affirmed.

APPEALS from decrees of the District Court granting preliminary injunctions restraining the Governor, and other officials, of the State of Oregon from threatening or attempting to enforce an amendment to the school law -- an initiative measure adopted by the people November 7, 1922, to become effective in 1926 -- requiring parents and others having control of young children to send them to the primary schools of the State. The plaintiffs were two Oregon corporations owning and conducting schools.

Page 268 U. S. 529

MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

These appeals are from decrees, based upon undenied allegations, which granted preliminary orders restraining

Page 268 U. S. 530

appellants from threatening or attempting to enforce the Compulsory Education Act [*](#) adopted November 7, 1922, under the initiative provision of her Constitution by the voters of Oregon. Jud.Code, 266. They present the same points of law; there are no controverted questions of fact. Rights said to be guaranteed by the federal Constitution were specially set up, and appropriate prayers asked for their protection.

The challenged Act, effective September 1, 1926, requires every parent, guardian or other person having control or charge or custody of a child between eight and sixteen years to send him "to a public school for the period of time a public school shall be held during the current year" in the district where the child resides, and failure so to do is declared a misdemeanor. There are

exemptions not specially important here -- for children who are not normal, or who have completed the eighth grade, or who reside at considerable distances from any public school, or whose parents or guardians hold special permits from the County Superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between eight and sixteen, who have not completed the eighth grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business and greatly diminish the value of their property.

Appellee, the Society of Sisters, is an Oregon corporation, organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and personal

property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. It conducts interdependent primary and high schools and junior colleges, and maintains orphanages for the custody and control of children between eight and sixteen. In its primary schools, many children between those ages are taught the subjects usually pursued in Oregon public schools during the first eight years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church are also regularly provided. All courses of study, both temporal and religious, contemplate continuity of training under appellee's charge; the primary schools are essential to the system and the most profitable. It owns valuable buildings, especially constructed and equipped for school purposes. The business is remunerative -- the annual income from primary schools exceeds thirty thousand dollars -- and the successful conduct of this requires long-time contracts with teachers and parents. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce

the statute.

After setting out the above facts, the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that, unless enforcement of the measure is enjoined the corporation's business and property will suffer irreparable injury.

Appellee, Hill Military Academy, is a private corporation organized in 1908 under the laws of Oregon, engaged

Page 268 U. S. 533

in owning, operating and conducting for profit an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years. The average attendance is one hundred, and the annual fees received for each student amount to some eight hundred dollars. The elementary department is divided into eight grades, as in the public schools; the college preparatory department has four grades, similar to those of the public high schools; the courses of study conform to the requirements of the State Board of Education. Military instruction and training are also given, under the supervision of an Army officer. It owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs, long time contracts must be made for supplies, equipment, teachers and pupils. Appellants, law officers of the State and County, have publicly announced that the Act of November 7, 1922, is valid, and have declared their intention to enforce it. By reason of the statute and threat of enforcement, appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

The Academy's bill states the foregoing facts and then alleges that the challenged Act contravenes the corporation's rights guaranteed by the Fourteenth Amendment and that, unless appellants are restrained from proclaiming its validity and threatening to enforce it, irreparable injury will result. The prayer is for an appropriate injunction.

No answer was interposed in either cause, and, after proper notices, they were heard by three judges (Jud.Code 266) on motions for preliminary injunctions upon the specifically alleged facts. The court ruled that the Fourteenth Amendment guaranteed appellees against the

Page 268 U. S. 534

deprivation of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property, and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that these schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage, and thereby destroy their owners' business and property. Finally, that the threats to enforce the Act would continue to cause irreparable injury, and the suits were not premature.

No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. These parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and

meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of *Meyer v. Nebraska*, [262 U. S. 390](#) , we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children

Page 268 U. S. 535

under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Appellees are corporations, and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. *Northwestern Life Ins. Co. v. Riggs*, [203 U. S. 243](#) , [203 U. S. 255](#) ; *Western Turf Association v. Greenberg*, [204 U. S. 359](#) , [204 U. S. 363](#) . But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. *Truax v. Raich*, [239 U. S. 33](#) ; *Truax v. Corrigan*, [257 U. S. 312](#) ; *Terrace v. Thompson*, [263 U. S. 197](#) .

The courts of the State have not construed the Act, and we must determine its meaning for ourselves. Evidently it was expected to have general application, and cannot be construed as though merely intended to amend the charters of certain

private corporations, as in *Berea College v. Kentucky*, [211 U. S. 45](#) . No argument in favor of such view has been advanced.

Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be deprived

Page 268 U. S. 536

of patronage. But the injunctions here sought are not against the exercise of any proper power. Plaintiffs asked protection against arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in *Truax v. Raich*, *Truax v. Corrigan* and *Terrace v. Thompson, supra*, and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers. *Hitchman Coal & Coke Co. v. Mitchell*, [245 U. S. 229](#) ; *Duplex Printing Press Co. v. Deering*, [254 U. S. 443](#) ; *American Steel Foundries v. Tri-City Central Trades Council*, [257 U. S. 184](#) ; *Nebraska District v. McKelvie*, [262 U. S. 404](#) ; *Truax v. Corrigan, supra*, and cases there cited.

The suits were not premature. The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well recognized function of courts of equity. The decrees below are

Affirmed.

*

" *Be it Enacted by the People of the State of Oregon:* "

"Section 1. That Section 5259, Oregon Laws, be and the same is hereby amended so as to read as follows:"

"Sec. 5259. *Children Between the Ages of Eight and Sixteen Years* -- Any parent, guardian or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that, in the following cases, children shall not be required to attend public schools:"

"(a) *Children Physically Unable* -- Any child who is abnormal, subnormal or physically unable to attend school."

"(b) *Children Who Have Completed the Eighth Grade* -- Any child who has completed the eighth grade, in accordance with the provisions of the state course of study."

"(c) *Distance from school* -- Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from public school; provided, however, that, if transportation to and from school is furnished by the school district, this exemption shall not apply."

"(d) *Private Instruction* -- Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other

person, to send such child to the public school the remainder of the school year."

"If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than \$5, nor more than \$100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court."

"This Act shall take effect and be and remain in force from and after the first day of September, 1926."

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