Supplementary Material

Chapter 11: The Contemporary Era – Individual Rights

Church v. Illinois, 164 Ill. 2d 153 (IL 1995)

In 1983, the Illinois state legislature adopted a statute establishing licensing requirements for private alarm contractors. The state department responsible for professional regulation was directed to develop appropriate rules and issue licenses to qualified applicants. The ultimate licensing requirements required three years of full-time employment by a private alarm contractor agency, among other things. The department was authorized to grant a license to applicants without that level of experience if they nonetheless demonstrated adequate "competence and experience." In 1988, Robert Church purchased a private alarm contracting business. He operated the business for three years, while also continuing to work as a police officer, before discovering that he needed a license for the alarm business and submitted an application. The relevant testing board denied the application on the grounds that Church did not meet the experience requirements, and the director of the department accepted that recommendation. Church filed suit in county court. The judge overturned the board's decision as "clearly arbitrary and capricious" and ordered the department to grant the license. An appellate court reversed, and Church appealed to the state supreme court. In this appeal, Church focused on the claim that the statue had unconstitutionally granted existing alarm contractors a monopoly over entrance into that trade. The state supreme court unanimously agreed, reversing the appellate court. Earlier cases had established that monopolistic licensing requirements violated the state constitution's due process clause and clause prohibiting the legislative grant of a "special or exclusive privilege" to any corporation, association, or individual.

Could the court have reached the same conclusion under the Fourteenth Amendment's due process clause? Would a federal constitutional provision banning "special privileges" alter how the Fourteenth Amendment is interpreted? Are all laws requiring state licenses before practicing a trade or profession constitutionally problematic? What distinguishes the alarm contractors' licensing requirements? Would a licensing requirement that included a specific program of education, with the schools providing that education was monitored and supervised by the professional trade association, be constitutionally problematic? Do apprenticeship requirements violate the Thirteenth Amendment to the U.S. Constitution?

BILANDIC, CHIEF JUSTICE.

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It is undisputed that the plaintiff does not meet the experience requirements set forth in section 14(c)(11)(B) of the Act. Instead, the plaintiff claims that he has satisfied the competence and experience requirements of section 14(c)(11)(C) of the Act by virtue of his experience as a police officer and his experience working part-time for three years at the unlicensed alarm business that he owned.

As stated, the Department denied the plaintiff's application, finding that the plaintiff's experience does not meet the requirements of section 14(c)(11)(C). The Department gave the following reasons for its denial of the plaintiff's application:

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"The applicant's experience is primarily in the area of law enforcement, not private alarm contracting. A law enforcement background may qualify an individual for examination in the private detective or private security contractor fields, but does not provide any experience in the private alarm contractor field, and therefore, cannot be counted as experience in the alarm field. The Board does not feel the amount of alarm experience offered by Mr. Church demonstrates an acceptable level of expertise to qualify to sit for the examination."

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The plaintiff argues that section 14(c)(11)(C), as interpreted by the Department, unconstitutionally grants members of the private alarm contracting trade an unregulated monopoly over entrance into the private alarm contracting trade. Before addressing the plaintiff's constitutional claim, we initially consider whether the Department's construction of section 14(c)(11)(C) is consistent with the legislature's intent, as expressed in the language of the statute.

The legislature has, in section 14(c)(11)(C), expressly delegated to the Department authority to determine what standards an applicant must satisfy to qualify for a license (when the applicant does not satisfy the experience requirements specifically delineated in section 14(c)(11)(B) of the Act). Where the legislature expressly or implicitly delegates to an agency the authority to clarify and define a specific statutory provision, administrative interpretations of such statutory provisions should be given substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute. . . .

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We find that the Department's conclusion that applicants for licensure satisfy the experience requirements of section 14(c)(11)(C) only if they have worked full-time, for three years in a supervisory capacity within the private alarm contracting field is a permissible construction of that section. The Department's construction is therefore entitled to deference.

Our conclusion that the Department's construction of section 14(c)(11)(C) is reasonable is influenced in part by the fact that the legislature expressly adopted the Department's interpretation when it drafted the current version of the Act. . . .

We must now consider the plaintiff's claim that section 14(c)(11)(C), as interpreted by the Department, is unconstitutional because it requires an applicant to have three years of employment with a private alarm contractor as a precondition to licensure. The plaintiff argues that the statute thereby grants members of the private alarm contracting industry an unregulated monopoly over entrance into the private alarm contracting trade.

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Turning to the merits of the constitutional challenge, the Department argues that the State, pursuant to its inherent police powers, may regulate businesses for the protection of public health, safety and welfare. *Nebbia v. New York* (1934). . . .

The fact that the legislature has invoked its police power to regulate a particular trade, however, is not conclusive that such power was lawfully exercised. . . . The means of regulation which the legislature adopts by statute must have a definite and reasonable relationship to the end of protecting the public health, safety and welfare. Here, we must determine whether those portions of the Act relating the licensing of private alarm contractors bear a reasonable relationship to the legislature's goal of protecting the public from the hazards of incompetent private alarm contractors.

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In *People v. Brown* (IL 1950), the court invalidated the 1935 plumbing license statute, which provided that a person could not take the examination to become a licensed master plumber until he had spent five years in the employment of a master plumber as an apprentice and then, spent an additional five years in the employment of a master as a journeyman plumber. The statutes did not allow a person to learn the trade of journeyman plumber in any way other than by apprenticing with a master plumber.

The statute did not, however, require master plumbers to employ or instruct any prospective competitors if they did not wish to do so.

The court found the statute unconstitutional, in part, because it gave master plumbers monopolistic control over the avenues of entry into the plumbing business. . . .

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The *People v. Johnson* (IL 1977) court acknowledged that the legislature may reasonably require an applicant to have practical experience, such as an apprenticeship, as a prerequisite to licensure. The court established a two-part test to determine whether an apprenticeship provision is constitutionally valid: "(1) [the provision] must not have the effect, when implemented, of conferring on members of the trade a monopolistic right to instruct, and (2) [it] must be structured in such a way that the apprenticeship it requires is calculated to enhance the * * * expertise of prospective licensees."

Viewing the instant Act in light of the two-part test established in *Johnson*, we conclude that licensing scheme for private alarm contractors is unconstitutional. The Act violates the first part of the *Johnson* two-part test, because it grants members of the private alarm contracting trade monopolistic control over individuals who wish to gain entrance into the field. . . . No matter how well qualified a person may be by instruction, training or prior experience, he or she can never of his or her own free will become a licensed private alarm contractor unless a member of the regulated industry is willing to hire him or her on a full-time basis for the requisite time period in a particular capacity. The Act does not require private alarm contractors to employ a person who wishes to enter the field, nor does the refusal to employ such a person need to be based upon any valid reason. . . . In effect, the experience provisions within the Act, as implemented by the Department, give members of the private alarm industry an unregulated and monopolistic right to control entrance to the private alarm business.

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The Department's reliance upon *Illinois Polygraph Society v. Pellicano* (IL 1980) is . . . misplaced. In that case, the court upheld a statute which required polygraph examiners to complete a six-month course of study prescribed by the Department of Registration and Education as a prerequisite for licensure. The court rejected an argument that the statute, like the plumbing licensing . . . , was unconstitutional. In upholding the validity of the statute, the *Pellicano* court relied upon several factors that do not exist under the instant statute. The court noted that the statute simply required a certain amount of course study as a prerequisite to licensure and did not require employment for a period of years before an applicant qualified for a license. The *Pellicano* court also noted that any person could obtain an internship license under the statute simply by applying and paying the required fee, and that the courses required by statute were not necessarily taught by licensed examiners. Thus, the court concluded that licensed examiners did not possess a monopolistic right to instruct prospective licensees.

Here, on the other hand, the plaintiff cannot obtain any amount of study at any school or vocational program that would qualify him for a license as a private alarm contractor. . . . We therefore conclude that the instant statute . . . grants members of a regulated industry monopolistic control over entrance into the private alarm contracting trade.

The instant Act also violates the second part of the test set forth in *Johnson*, because there is nothing to suggest that the nature and duration of employment required under the statute is calculated to enhance the expertise of prospective licensees. . . . Even a cursory review of the plaintiff's application for licensure demonstrates that the plaintiff received training in almost every subject matter listed in section 27 while employed as a police officer. Thus, it appears that the training the plaintiff received outside the private alarm contracting field is at least equal to, if not more extensive than, the limited training statutorily required of employees within the private alarm contracting industry. The Department's brief suggests that the plaintiff lacked sufficient electrical experience to qualify for licensure under the Act. Yet, under the Department's interpretation of the Act, an applicant with the plaintiff's experience and extensive electrical experience would still not qualify for licensure unless he or she was employed full-time, for three years in a supervisory capacity within the private alarm contracting field. While the

legislature and the Department may have rationally believed that practical experience is necessary to assure competence in the private alarm contracting trade, there is nothing to suggest that the duration and type of experience required under the Act is necessary to enhance the expertise of prospective licensees. There is nothing in the record to suggest that the expertise needed to be a competent private alarm contractor can be provided only by full-time employment as a private alarm contractor for three years in a supervisory capacity. Accordingly, we conclude that the Act, as interpreted by the Department, violates the second prong of the *Johnson* test.

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For the foregoing reasons, we *reverse* . . . and remand. . . .