CHAPTER 6 DOCUMENTS

Constitutional Amendments

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII[1]

{Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.}

[1] Repealed by Section 1 of Amendment XXI

Amendment XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Section 1. The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Syllabi of Supreme Court Decisions

Lochner v. New York, 198 U.S. 45 (1905)

Syllabus (Legal Information Institute of Cornell University)

Argued: February 23, 24, 1905 – Decided: April 17, 1905

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor.

There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified a a health law to safeguard the public health, or the health of the individuals following that occupation.

Section 110 of the labor law of the State of New York, providing that no employes shall be required or permitted to work in bakeries more than sixty hours in a week, or ten hours a day, is not a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to labor, and, as such, it is in conflict with, and void under, the Federal Constitution.

This is a writ of error to the County Court of Oneida County, in the State of New York (to which court the record had been remitted), to review the judgment of the Court of Appeal of that State affirming the judgment of the Supreme Court, which itself affirmed the judgment of the County Court, convicting the defendant of a misdemeanor on an indictment under a statute of that State, known, by its short title, as the labor [p46] law. The section of the statute under which the indictment was found is section 110, and is reproduced in the margin, (together with the other sections of the labor law upon the subject of bakeries, being sections 111 to 115, both inclusive). The indictment averred that the defendant

wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week,

after having been theretofore convicted of a violation of the same act, and therefore, as averred, he committed the crime or misdemeanor, second offense. The plaintiff in error demurred to the indictment on several grounds, one of which was that the facts stated did not [p47] constitute a crime. The demurrer was overruled, and the plaintiff in error having refused to plead further, a plea of not guilty was entered by order of the court and the trial commenced, and he was convicted of misdemeanor, second offense, as indicted, and sentenced to pay a fine of $50 and to stand committed until paid, not to exceed fifty days in the Oneida County jail. A certificate of reasonable doubt was granted by the county judge of Oneida County, whereon an appeal was taken to the Appellate Division of the Supreme Court, Fourth Department, where the judgment of conviction was affirmed. 73 App.Div.N.Y. 120. A further appeal was then taken to the Court of Appeals, where the judgment of conviction was again affirmed. 177 N.Y. 145. [p52]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0198_0045_ZS.html> [verified May 30, 2012].)

A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935)

Syllabus (Legal Information Institute of Cornell University)

Argued: May 2, 3, 1935 --- Decided: May 27, 1935 [*]

1. Extraordinary conditions, such as an economic crisis, may call for extraordinary remedies, but they cannot create or enlarge constitutional power. P. 528.

2. Congress is not permitted by the Constitution to abdicate, or to transfer to others, the essential legislative functions with which it is vested. Art. I, § 1; Art. I, § 8, par. 18. *Panama Refining Co. v. Ryan, 293 U.S. 388. P. 529.*

3. Congress may leave to selected instrumentalities the making of subordinate rules within prescribed limits, and the determination of facts to which the policy, as declared by Congress, is to apply; but it must itself lay down the policies and establish standards. P. 530.

4. The delegation of legislative power sought to be made to the President by § 3 of the National Industrial Recovery Act of June 16, 1933, is unconstitutional (pp. 529 *et seq.*), and the Act is also unconstitutional, as applied in this case, because it exceeds the power of Congress to regulate interstate commerce and invades the power reserved exclusively to the States (pp. 542 *et seq.*).

5. Section 3 of the National Industrial Recovery Act provides that "codes of fair competition," which shall be the " standards of fair competition" for the trades and industries to which they relate, may be approved by the President upon application of representative associations of the trades or industries to be affected, or may be prescribed by him on his own motion. Their provisions [p496] are to be enforced by injunctions from the federal courts, and "any violation of any of their provisions in any transaction in or affecting interstate commerce" is to be deemed an unfair method of competition within the meaning of the Federal Trade Commission Act, and is to be punished as a crime against the United States. Before

approving, the President is to make certain findings as to the character of the association presenting the code and absence of design to promote monopoly or oppress small enterprises, and must find that it will "tend to effectuate the policy of this title." Codes permitting monopolies or monopolistic practices are forbidden. The President may "impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in the furtherance of the public interest, and may provide such exceptions and exemptions from the provisions of such code," as he, in his discretion, deems necessary "to effectuate the policy herein declared." A code prescribed by him is to have the same effect as one approved on application.

Held:

(1) The statutory plan is not simply one of voluntary effort; the "codes of fair competition" are meant to be codes of laws. P. 529.

(2) The meaning of the term "fair competition" (not expressly defined in the Act) is clearly not the mere antithesis of "unfair competition," as known to the common law, or of "unfair methods of competition" under the Federal Trade Commission Act. P. 531.

(3) In authorizing the President to approve codes which "will tend to effectuate the policy of this title," § 3 of the Act refers to the Declaration of Policy in § 1. The purposes declared in § 1 are all directed to the rehabilitation of industry and the industrial recovery which was the major policy of Congress in adopting the Act. P. 534.

(4) That this is the controlling purpose of the code now before the Court appears both from its repeated declarations to that effect and from the scope of its requirements. P. 536.

(5) The authority sought to be conferred by § 3 was not merely to deal with "unfair competitive practices" which offend against existing law, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which would embrace what the formulators would propose, and what the President [p497] would approve or prescribe, as wise and beneficent measures for the government of trades and industries, in order to bring about their rehabilitation, correction and improvement, according to the general declaration of policy in § 1. Codes of laws of this sort are styled " codes of fair competition." P. 535.

(6) A delegation of its legislative authority to trade or industrial associations, empowering them to enact laws for the rehabilitation and expansion of their trades or industries, would be utterly inconsistent with the constitutional prerogatives and duties of Congress. P. 537.

(7) Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade and industry. P. 537.

(8) The only limits set by the Act to the President's discretion are that he shall find, first, that the association or group proposing a code imposes no inequitable restrictions on admission to membership and is truly representative; second, that the code is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and third, that it "will tend to effectuate the policy of this title" -- this last being

a mere statement of opinion. These are the only findings which Congress has made essential in order to put into operation a legislative code having the aims described in the "Declaration of Policy." P. 538.

(9) Under the Act, the President, in approving a code, may impose his own conditions, adding to or taking from what is proposed, as "in his discretion" he thinks necessary "to effectuate the policy" declared by the Act. He has no less liberty when he prescribes a code on his own motion or on complaint, and he is free to prescribe one if a code has not been approved. P. 538.

(10) The acts and reports of the administrative agencies which the President may create under the Act have no sanction beyond his will. Their recommendations and findings in no way limit the authority which § 3 undertakes to vest in him. And this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial activities throughout the country. P. 539.

(11) Such a sweeping delegation of legislative power finds no support in decisions of this Court defining and sustaining the [p498] powers granted to the Interstate Commerce Commission, to the Radio Commission, and to the President when acting under the "flexible tariff" provisions of the Tariff Act of 1922. P. 539.

(12) Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead, it authorizes the making of codes to prescribe them. For that legislative undertaking, it sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion found in § 1. In view of the broad scope of that declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. The code-making authority thus sought to be conferred is an unconstitutional delegation of legislative power. P. 541.

6. Defendants were engaged in the business of slaughtering chickens and selling them to retailers. They bought their fowls from commission men in a market where most of the supply was shipped in from other States, transported them to their slaugterhouses, and there held them for slaughter and local sale to retail dealers and butchers, who in turn sold directly to consumers. They were indicted for disobeying the requirements of a "Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York," approved by the President under § 3 of the National Industrial Recovery Act. The alleged violations were: failure to observe in their place of business provisions fixing minimum wages and maximum hours for employees; permitting customers to select individual chickens from particular coops and half-coops; sale of an unfit chicken; sales without compliance with municipal inspection regulations and to slaughterers and dealers not licensed under such regulations; making false reports, and failure to make reports relating to range of daily prices and volume of sales.

Held:

(1) When the poultry had reached the defendants' slaughterhouses, the interstate commerce had ended, and subsequent transactions in their business, including the matters charged in the indictment, were transactions in intrastate commerce. P. 542.

(2) Decisions which deal with a stream of interstate commerce -- where goods come to rest within a State temporarily and are later to go forward in interstate commerce -- and with the regulation [p499] of transactions involved in that practical continuity of movement, are inapplicable in this case. P. 543.

(3) The distinction between intrastate acts that directly affect interstate commerce, and therefore are subject to federal regulation, and those that affect it only indirectly, and therefore remain subject to the power of the States exclusively, is clear in principle, though the precise line can be drawn only as individual cases arise. Pp. 544, 546.

(4) If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to federal control. P. 546.

(5) The distinction between direct and indirect effects has long been clearly recognized in the application of the Anti-Trust Act. It is fundamental and essential to the maintenance of our constitutional system. P. 547.

(6) The Federal Government cannot regulate the wages and hours of labor of persons employed in the internal commerce of a State. No justification for such regulation is to be found in the fact that wages and hours affect costs and prices, and so indirectly affect interstate commerce, nor in the fact that failure of some States to regulate wages and hours diverts commerce from the States that do regulate them. P. 548.

(7) The provisions of the code which are alleged to have been violated in this case are not a valid exercise of federal power. P. 550.

CERTIORARI on the petition of defendants in a criminal case to review the judgment below insofar as it affirmed convictions on a number of the counts of an indictment and, on the petition of the Government, to review the same judgment insofar as it reversed convictions on other counts. The indictment charged violations of a "Live Poultry Code," and conspiracy to commit them. [p519]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0295_0495_ZS.html> [verified May 30, 2012].)

West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

Syllabus (Legal Information Institute of Cornell University)

Argued: December 16, 17, 1936 – Decided: March 29, 1937

1. Deprivation of liberty to contract is forbidden by the Constitution if without due process of law, but restraint or regulation of this liberty, if reasonable in relation to its subject and if adopted for the protection of the community against evils menacing the health, safety, morals and welfare of the people, is due process. P. 391.

2. In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. P. 393.

3. The State has a special interest in protecting women against employment contracts which through poor working conditions, long hours or scant wages may leave them inadequately supported and undermine their health; because:

(1) The health of women is peculiarly related to the vigor of the race;

(2) Women are especially liable to be overreached and exploited by unscrupulous employers; and

(3) This exploitation and denial of a living wage is not only detrimental to the health and wellbeing of the women affected, but casts a direct burden for their support upon the community. Pp. 394, 398, et seq.

4. Judicial notice is taken of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. P. 399.

5. A state law for the setting of minimum wages for women is not an arbitrary discrimination because it does not extend to men. P. 400.

6. A statute of the State of Washington (Laws, 1913, c. 174; Remington's Rev.Stats., 1932, § 7623 et seq.) providing for the establishment of minimum wages for women, held valid. Adkins v. Children's Hospital, 261 U.S. 525, is overruled; Morehead v. New York ex rel. Tipaldo, 298 U.S. 587, distinguished. P. 400.

[p380] This was an appeal from a judgment for money directed by the Supreme Court of Washington, reversing the trial court, in an action by a chambermaid against a hotel company to recover the difference between the amount of wages paid or tendered to her as per contract and a larger amount computed on the minimum wage fixed by a state board or commission. [p386]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0300_0379_ZS.html> [verified May 30, 2012].)

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937)

Syllabus (Legal Information Institute of Cornell University)

Argued: February 10, 11, 1937 – Decided: April 12, 1937

1. The distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal form of government. P. 29.

2. The validity of provisions which, considered by themselves, are constitutional, held not affected by general and ambiguous declarations in the same statute. P. 30.

3. An interpretation which conforms a statute to the Constitution must be preferred to another which would render it unconstitutional or of doubtful validity. P. 30.

4. Acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional [p2] power, and this includes acts, having that effect, which grow out of labor disputes. P. 31.

5. Employees in industry have a fundamental right to organize and select representatives of their own choosing for collective bar gaining, and discrimination or coercion upon the part of their employer to prevent the free exercise of this right is a proper subject for condemnation by competent legislative authority. P. 33.

6. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of such commerce. Pp. 34-36.

7. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential, or appropriate, to protect that commerce from burdens and obstructions, Congress has the power to exercise that control. P. 37.

8. This power must be considered in the light of our dual system of government, and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would, in view of our complex society, effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree. P. 37.

9. Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce, is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. P. 37.

10. The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry, although the industry when separately viewed is local. P. 38.

11. The relation to interstate commerce of the manufacturing enterprise involved in this case was such that a stoppage of its operations by industrial strife would have an immediate, direct and paralyzing effect upon interstate commerce. Therefore, Congress had constitutional authority, for the protection of interstate commerce, to safeguard the right of

the employees in the manufacturing plant to self-organization and free choice of their representatives for collective bargaining. P. 41. [p3]

Judicial notice is taken of the facts that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace, and that refusal to confer and negotiate has been one of the most prolific causes of strife.

12. The National Labor Relations Act of July 5, 1935, empowers the National Labor Relations Board to prevent any person from engaging in unfair labor practices "affecting commerce"; its definition of "commerce" (aside from commerce within a territory or the District of Columbia) is such as to include only interstate and foreign commerce, and the term "affecting commerce" it defines as meaning

in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

The "unfair labor practices," as defined by the Act and involved in this case, are restraint or coercion of employees in their rights to self-organization and to bargain collectively through representatives of their own choosing, and discrimination against them in regard to hire or tenure of employment for the purpose of encouraging or discouraging membership in any labor organization. §§ 7 and 8. The Act (§ 9a) declares that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit; but that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. Held:

(1) That in safeguarding rights of employees and empowering the Board, the statute, insofar as involved in the present case, confines itself to such control of the industrial relationship as may be constitutionally exercised by Congress to prevent burden or obstruction to interstate or foreign commerce arising from industrial disputes. P. 43.

(2) The Act imposes upon the employer the duty of conferring and negotiating with the authorized representatives of the employees for the purpose of settling a labor dispute, but it does not preclude such individual contracts as the employer may elect to make directly with individual employees. P. 44.

(3) The Act does not compel agreements between employers and employees. Its theory is that free opportunity for negotiation [p4] with accredited representatives of employees is likely to promote industrial peace, and may bring about the adjustments and agreements which the Act, in itself, does not attempt to compel. P. 45.

(4) The Act does not interfere with the normal right of the employer to hire, or with the right of discharge when exercised for other reasons than intimidation and coercion, and what is the true reason in this regard is left the subject of investigation in each case, with full opportunity to show the facts. P. 45.

13. A corporation which manufactured iron and steel products in its factories in Pennsylvania from raw materials, most of which it brought in from other States, and which shipped 75% of the manufactured products out of Pennsylvania and disposed of them throughout this

country and in Canada, was required by orders of the National Labor Relations Board to tender reinstatement to men who had been employed in one of the factories but were discharged because of their union activities and for the purpose of discouraging union membership. The orders further required that the company make good the pay the men had lost through their discharge, and that it desist from discriminating against members of the union, with regard to hire and tenure of employment, and from interfering by coercion with the self-organization of its employees in the plant. Held that the orders were authorized by the National Labor Relations Act, and that the Act is constitutional as thus applied to the company. Pp. 30, 32, 34, 41.

14. The right of employers to conduct their own business is not arbitrarily restrained by regulations that merely protect the correlative rights of their employees to organize for the purpose of securing the redress of grievances and of promoting agreements with employers relating to rates of pay and conditions of work. P. 43.

15. The fact that the National Labor Relations Act subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible, and fails to provide a more comprehensive plan, with better assurance of fairness to both sides and with increased chances of success in bringing about equitable solutions of industrial disputes affecting interstate commerce, does not affect its validity. The question is as to the power of Congress, not as to its policy, and legislative authority, exerted within its proper field, need not embrace all the evils within its reach. P. 46. [p5]

16. The National Labor Relations Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. These findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review, all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. These procedural provisions afford adequate opportunity to secure judicial protection against arbitrary action, in accordance with the well settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. P. 47.

17. The provision of the National Labor Relations Act, § 10(c), authorizing the Board to require the reinstatement of employees found to have been discharged because of their union activity or for the purpose of discouraging membership in the union, is valid. P. 47.

18. The provision of the Act, § 10(c), that the Board, in requiring reinstatement, may direct the payment of wages for the time lost by the discharge, less amounts earned by the employee during that period, does not contravene the provisions of the Seventh Amendment with respect to jury trial in suits at common law. P. 48.

CERTIORARI, 299 U.S. 534, to review a decree of the Circuit Court of Appeals declining to enforce an order of the National Labor Relations Board. [p22]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0301_0001_ZS.html> [verified May 30, 2012].)