

*Bill 7
Rights*

STATE OF NEW JERSEY
CONVENTION TO REVISE THE CONSTITUTION

PROPOSED AMENDMENTS

to

Bill of Rights (Article I)

Tax Provision (Article IX)

and

MEMORANDUM IN SUPPORT THEREOF

Submitted by
Joint Committee on Constitutional Bill of Rights
In behalf of Affiliated Organizations & Individuals

Leo Pfeffer
General Counsel

July 8, 1947

In behalf of its affiliated organizations and individuals, the Joint Committee on Constitutional Bill of Rights respectfully submits to this Convention the following proposed amendments to Article I and Article IV of the present constitution: *

ARTICLE I.

Sec. 4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right because of his race, color, religion or national origin.

Sec. 5a. (New) No person shall be denied the equal protection of the laws of this state or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the state nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this article, the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law.

Sec. 16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made. Property taken for public use shall be enjoyed without discrimination because of race, color, religion, or national origin.

Sec. 19a. (New) The right of workers to organize and bargain collectively shall not be impaired.

*Underlined matter added; Sections 5a and 19a are new.

ARTICLE IV.

Sec. 7(12). Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution, other than a religious or sectarian institution, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin.

1.

It is particularly appropriate that the State of New Jersey should be revising its constitution and re-examing its Bill of Rights at the same time that the United Nations is engaged in drafting an International Bill of Human Rights for all humanity. The American people may well be proud that its original contribution to the evolution of constitutional government - a bill guaranteeing basic human rights - has been adopted by the United Nations. The State of New Jersey has special reason to be proud, for its Bill of Rights is unquestionably one of the finest among all of the State constitutions, and many of its provisions are included in the various proposals now being submitted to the Drafting Committee of the United Nations Commission on Human Rights.

2.

The constitution which now governs the State of New Jersey was agreed upon by the delegates of the people in convention at Trenton between May 14 and June 29th, 1844 and was ratified at an election held August 13, 1844. This constitution is the second in the history of the States, the first having been promulgated at a constitutional convention on July 3, 1776, the day before this country declared its independence of Great Britain.

The Convention now assembled is entrusted with the duty of re-examining the provisions of the 1844 constitution in the light of the century which has elapsed and of recasting and revising that constitution so that it more closely corresponds to the needs of today.

While the administrative relations between a government and the people which has created that government must develop and and change to remain in harmony with the development and change of a dynamic society, the basic human values which constitutions declare and protect are unchanging. The premises underlying our present constitution (set forth in sections 1 and 2 of Article I), that "All men are by nature free and independent, and have certain natural and inalienable rights", and that "All political power is inherent in the people", are as valid today as they were when first declared. Indeed, we have but recently engaged in a tragic world conflict to test the validity of these premises, and the adoption of those premises by the federation of nations which arose out of that conflict establishes their validity for all time.

For this reason we do not propose that this Convention alter in even the slightest the present provisions of Article I of the 1844 constitution. Indeed, we urge strongly that nothing shall be detracted from that article. Nevertheless, we do believe that the rapid evolution and development of our economic and social system during the past century requires certain additions to give particular twentieth-century meaning to the basic truths.

In 1844, a threat to the basic truth of equality existed in the possibility that by reason of difference in the forms whereby people worship their Creator, some people might be denied political rights. The Constitution therefore guaranteed (Article I, section 3) that "no religious test shall be required as a qualification for any office or public trust." A century later, impairment of the basic truth of equality manifested itself in the undemocratic practice of many employers to refuse employment to persons of certain racial or religious groups. Recognizing that the truth of equality is as valid today as in 1844, our Legislature enacted the Law Against Discrimination (Chapter 169 of the Laws of 1945) even though no provision of the 1844 constitution expressly authorizes such legislation. Today, the principal threats to the truth of equality are found in practices of discriminations because of race, color, religion or national origin in the fields of employment, education, enjoyment of property and pursuit of a livelihood in a business, trade or profession. The purpose of the proposed amendments to the 1844 Constitution which we respectfully submit for the consideration of this Convention is to recognize and declare that the basic truth of equality is as valid in these areas as in the political area.

3.

Our first suggested amendment seeks to add "race", "color" and "national origin" to the prohibition contained in section 4 of Article I against denial of any civil right because of religious principles. For the purpose of uniformity we suggest that the

word "religion" be substituted for "religious principles". The terms are synonymous, but the former is generally used in constitutions and statutes and is stylistically preferable in combination with race, color and national origin. The section as amended in accordance with our suggestion would therefore read as follows:

"There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right because of his race, color, religion or national origin."

The substance of the amendment is discussed hereafter in relation to our suggested new section.

4.

The heart of our proposed amendment is a new section, which we have designated section 5a, to follow section 5 of Article I of the present constitution. The proposed new section reads as follows:

"No person shall be denied the equal protection of the laws of this state of any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the state nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation hereof shall be void and unenforceable. Such civil rights shall include, in addition to the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law."

Before analyzing the specific provisions of this section, its underlying philosophy should be briefly considered. The

section rests upon the "self evident truth" declared in our Declaration of Independence that "all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness." A similar provision is contained in our present State constitution (Article 1, section 1). These "inalienable rights", more specifically detailed, are recognized and guaranteed in the Bill of Rights sections of our Federal and State constitution, and are generally designated as "civil" rights. Anything less than complete equality in the "pursuit of Happiness" and enjoyment of civil rights is completely inconsistent with our National and State policy and is repugnant to our democratic concepts. Distinctions based on race, color, religion or national origin are abhorrent to our spiritual and political conscience.

These truths have been recognized by all branches of our Federal and State governments, in the international as well as domestic arenas. Our Supreme Court, speaking through the late Chief Justice Stone stated it thus:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to free people whose institutions are founded upon the doctrine of equality" (Hirabayshi v. United States, 320 U.S. 81, 100 [1943]).

Justice Murphy, concurring in the same case stated:

"Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that for centuries the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups" (pp. 110-111).

The validity of this principle has been recognized by our government in the international field. The relationship among the various racial, religious and ethnic groups which make up a nation is a matter of international as well as national concern. The United States Government has made representation to foreign governments in respect to their treatment of minority nationals. Treaties concluding both world wars contain provisions requiring the signatories not to discriminate against their national and racial minorities. The Charter of the United Nations, ratified by the Senate of the United States and signed by the President (August 8, 1945) imposes upon all signatories the duty to "promote...uniform respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion." (Article 55c)

To sum up, it may be said, again in the words of Chief Justice Stone, that distinctions based on race, color, religion or national origin are "irrelevant and invidious" (Steele v. Louisville & N.R. Co., 323 U.S. 192 [1944]). As will be indicated in our analysis of the specific provisions of our proposed amendment, substantial recognition of this principle has been given by the Legislature of our State. Here we need mention only the statement of our State Supreme Court, that "the dignities, equalities and rights of citizenship cannot be legally denied to members" of any particular race. (Bullock v. Wooding, 123 N.J.L. 176 [1939]).

5.

The first sentence of our proposed amendment reads:

"No person shall be denied the equal protection of the laws of this state or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty or property without due process of law."

This provision, taken from the Fourteenth Amendment of the Federal Constitution, requires little discussion. Its absence from the present State constitution is explained by the fact that the State constitution antedated the Fourteenth Amendment. In slightly varying forms, this provision is contained in the constitutions of most of the States.

6.

The provision in our proposed new section that "Neither the state nor any political subdivision or any agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil right..." constitutes a limitation on both State and private action.

The prohibition against discriminatory action by a State or its subdivisions is merely a codification of existing case law under the Fourteenth Amendment. The United States Supreme Court has consistently invalidated action by States or municipalities which attempted to give legal effect to the irrelevancy of race, color or religion. It would unduly extend the scope of this memorandum to discuss in detail the decisions in which States or municipalities were restrained from such discriminatory action. A few may be mentioned as illustrative.

In Yick Wo v. Hopkins (118 U.S. 356 [1886]) the Court invalidated a municipal practice of refusing to persons of Chinese descent permits to engage in the laundry business, the Court holding that the administration of a municipal ordinance for the carrying on of a lawful business violates the Fourteenth Amendment if it makes arbitrary discriminations founded on differences in race. In Buchanan v. Warley, (245 U.S. 60 [1916]) the Court invalidated a racial zoning ordinance. In State ex rel Gaines v. University of Missouri, (305 U.S. 337 [1928]) the Court held that a State could not deny to Negroes professional educational opportunities offered to persons of the white race. These as well as other cases which may be cited constitute the basis of our proposed provision forbidding discriminatory action by "the state or any political subdivision or agency thereof."

The restraint on the part of similar action by "any person, group, association, or corporation or institution" is necessitated by the holding in the Civil Rights Cases (109 U.S. 3 [1883]) that the Fourteenth Amendment prohibits only State or municipal action and not by private individuals or groups. It is the duty of the State to guarantee that racial or religious discrimination shall not be practiced by non-governmental agencies. The Supreme Court on another occasion expressed it thus:

"The equality of the rights of citizens is a principle of republicanism. Every republican government is duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there." (U.S. v. Cruikshank, 92 U.S. 592 [1875]).

Our neighbor, the State of New York, acknowledged this duty in its 1938 constitution, declaring that:

"No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution, or by the State or any agency or subdivision of the state." (Article I, section 11)

As will be indicated hereafter, our Legislature has in numerous specific instances recognized this principle. It is the purpose of our proposed amendment to make this recognition universally applicable and to accord it a constitutional basis.

7.

The proposed provision that "any writing, agreement, or practice in violation hereof shall be void and unenforceable" codifies fundamental contract law. Since the constitution is the supreme law of the State, any agreement or practice in violation of its letter or spirit is unenforceable (13 Corp. Juris p. 424). Nevertheless, the question occasionally arises as to whether a particular constitutional provision is or is not self-executing (see e.g. Groves v. Slaughter, 15 Pet. [U.S.] 449, 452); for that reason, it is desirable that the constitution specifically set forth the consequence of violation.

Such a provision is by no means unprecedented. The Fourteenth Amendment itself provides that "all debts, obligations and claims" growing out of the Civil War or out of the institution of slavery "shall be held illegal and void". Many State constitutions prohibit agreements or practices in violation of constitutional provisions which protect the rights of laborers and expressly provide that such contracts or agreements shall be void and

unenforcible (see e.g. Arizona, Constitution [1912] Article XVIII section 3.)

It is submitted that, the convention should clearly and expressly declare in the constitution that agreements or practices in violation of the Bill of Rights shall be void and unenforcible.

8.

Our proposed new section seeks to specify certain particular civil rights which are the principal object of its protection. These, as will be shown, have already been impliedly recognized by our National and State legislatures and courts. The purpose of our amendment is to accord to these specifications the constitutional dignity to which they are entitled.

Our proposed new section states first that the "rights and privileges" already "enumerated in this article" shall constitute civil rights protected from discrimination for reasons of race, color or religion. These rights and privileges include freedom of worship (section 3), of speech and press (section 5), of security from unreasonable searches and seizures (section 6) and of assembly (section 18), as well as the right of trial by jury (section 7) and a fair and speedy prosecution of criminal charges (section 8). Any action by the State or a subdivision or agency thereof, or even by a private individual or group which would tend toward racial or religious discrimination in the exercise of these rights would be violative of the constitution and void.

9.

The first of the civil rights expressly enumerated in our proposed new section is the right to be free from racial or religious discrimination in obtaining employment. That this is a fundamental right is too patent to be gainsaid. As stated by the Temporary Commission Against Discrimination which drafted the New York Law Against Discrimination:

"The right to life, the most primary of all civil rights, can have no fulfillment without the right to work."

Our own Court of Errors and Appeals declared that denial or curtailment of the

right to work by reason of race, color, religion or national origin deprives minorities "of the constitutional right to earn a livelihood" (Carroll v Local 269, 133 NJ Eq. 144, 147). Our Legislature has declared that such discrimination is

"a matter of concern to the government of the State, and... threatens not only the rights and proper privileges of the inhabitants of the State, but menaces the institutions and foundation of a free democratic State." (Chapter 169, P.L. 1945, section 3).

Accordingly, our Legislature stated that:

"The opportunity to obtain employment without discrimination because of race, creed, color, national origin or ancestry is recognized as and declared to be a civil right." (ibid, section 4).

Partial effect had been given to this principle in the statute forbidding employment discrimination in defense industries (P.L. 1942 Chapter 114), public works (Rev. Stats. section 10:1-10) and State, County and Municipal civil service (ibid, section XI: 22-11, XI: 17). Practically complete effect was given by the enactment in 1945 of the Law Against Discrimination (Chapter 169, P.L. 1945). Our amendment seeks to create an express constitutional basis for these and similar legislative enactments, thus eliminating any possible doubts of constitutionality, no matter how ill founded.

10.

It is of vital significance that, in respect to the provisions relating to employment and education contained in our proposed amendment, religious corporations or associations are expressly excluded. Freedom of religion is a basic component of democracy, and true freedom of religion is impossible if the State were to possess power to control or regulate the internal affairs of religious bodies. Our nation and our State are founded on the rock of religion, uncontrolled and undominated by government. The manner whereby a man worships his Creator is a matter for regulation by his own conscience; it is not subject to dictation by parliaments of men. It is not our intention to weaken in the slightest the command of the 1944 constitution that:

"No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience." (Article I, section 3).

For these reasons we have been careful to exclude religious bodies from the operation of the provisions relating to discrimination in employment and education.

11.

In the twentieth century, equality of opportunity in employment cannot exist without a co-equality of opportunity in education. Our complex economy demands educational training for its responsible positions. It is unrealistic and ineffectual, if not hypocritical to guarantee to persons of all races and religions the right to practise medicine or engineering or law without guaranteeing them the right to be free from racial or religious discrimination in obtaining admission to medical or engineering or law schools so as to acquire the training which would enable them to practice those professions

But it is not only because equality of employment opportunity requires a concomitant equality of educational opportunity that we have included freedom from discrimination in education as a civil right entitled to constitutional protection. It is our earnest conviction that the "pursuit of happiness" guaranteed by our 1844 constitution (Article I, section 1) is impossible of attainment without complete equality of educational opportunity. Rarely can supreme happiness be attained by the uneducated and the illiterate. The treasury of joy found in poetry and drama, in music and in art, is denied to them. This is recognized by our people, as evidenced by the fact - of which we can well be proud - that our State expends more per child annually for public school education than any other State in the Union (Report of National Education Association cited in Statement by Rabbi Stephen S. Wise to the United States Senate Committee on Labor and Public Welfare, April 25, 1947). Freedom from racial or religious discrimination in education is entitled to

governmental protection. Our State Legislature has recognized by enacting section 18:14-2 of the Revised Statutes, which provides, in part:

"No child between the ages of four and twenty years shall be excluded from any public school on account of his race, creed, color, national origin or ancestry."

The importance which our Legislature ascribed to equality of educational opportunity is attested by the penalty imposed for its deprivation. The balance of the section reads as follows:

"A member of any board of education who shall vote to exclude from any public school any child, on account of his race, creed, color, national origin, or ancestry shall be guilty of a misdemeanor, and punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00), or by imprisonment in the county jail, workhouse, or penitentiary of the county in which the offense has been committed, for not less than thirty days nor more than six months, or by both such fine and imprisonment in the discretion of the court."

Nor has recognition that equality of educational opportunity is a civil right entitled to governmental protection been limited to public school education. Our Civil Rights Act declares it a misdemeanor for "any . . . public library, kindergarten, primary and secondary school, high school, academy, college and university, or any educational institution under the supervision of the regents of the state of New Jersey" to deny admission to any person because of race, creed or color. (Rev. Stats, section 10:1-5). Here, as in the case of employment, the purpose of our proposed new section is to accord constitutional sanction to existing legislative policy.

12.

While our proposed amendment of subdivision 12, section 7, Article IV of the 1844 constitution is not technically included in the Bill of Rights, it is impliedly part of our proposed new section and should logically be dis-

cussed here. Our suggested amendment reads as follows:

"Exemption from taxation may be granted by law, but no exemption shall be enjoyed by any charitable or educational institution, other than a religious or sectarian institution, which denies to any person the use or enjoyment of its facilities because of race, color, religion, or national origin."

Little need be said in support of this amendment. To us and, we believe, to all men of good will, its fairness and justness are patent. Exemption from taxation is in effect a public subsidy - a grant of funds raised by taxing all the public. A non-sectarian educational institution which closes its doors to a portion of the people should not receive the financial aid of a government representing all of the people. Taxation without sharing the benefits of taxation is no less tyranny than taxation without representation.

13.

Nor does our proposed inclusion of equality in obtaining public accommodation require much discussion. Our Civil Rights Law already forbids racial or religious discrimination in the denial of access to places of public accommodation (Rev. Stats, section 10:1-5). Such discrimination is declared to be a misdemeanor and in addition gives rise to a right to bring a civil action (ibid, section 10:1-7). That this action is brought "in the name of the state of New Jersey" indicates that our Legislature deems that it is the people, even more than the discriminated individual, which is aggrieved by such anti-democratic practices. Here, too, we seek constitutional recognition of legislatively declared policy.

14.

Our proposed new section declares that freedom from racial or rel-

igious discrimination "in acquiring or enjoying any property" is a civil right accorded constitutional protection. This is far from a novel proposition. The very first sentence of the 1844 constitution states:

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and pursuing and obtaining safety and happiness."

Some two decades after this declaration, the Congress of the United States enacted the Civil Rights Law which provides, in part:

"All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." (8 United States Code, section 42).

It is our proposal that this principle be expressly protected by the new constitution against Legislative and private infringement, and we have therefore included it in our suggested new section.

15.

What has been said heretofore establishes clearly that freedom from racial and religious discrimination "in engaging in any business, trade, or profession, or otherwise pursuing a livelihood" is and should be a civil right, and we need, therefore, say nothing further to justify its inclusion in our proposed new section.

Our proposed new section does not limit the civil rights subject to its protection to those specifically enumerated therein. Its concluding phrase expressly authorizes recognition of other civil rights "by statute or common law." The purpose of this clause is to provide for the further evolution and development of our social, political and economic society in its progress toward the achievement of equality and brotherhood.

Our proposal includes an amendment to Article I, section 16 of the 1844 constitution by the addition of the following sentence:

"Property taken for public use shall be enjoyed without discrimination because of race, color, religion or national origin."

What we said in respect to tax exemption applies with equal force here.

"Public use" means use by all the public, not parts thereof selected on the basis of race or religion. If property is seized under the power of eminent domain for use as a library or a railroad or a hospital, that library, railroad or hospital must be open to all the people without racial or religious discrimination.

The justice of this principle is self-evident. Its legality is equally clear. (Connecticut College v. Calvert, 87 Conn. 421 /1913/ University of Southern California v. Robbins, 37 Pac. 2d 163 - Calif. App., 1924. We urge its recognition in the new constitution.

The final provision of our proposed amendment is a new section to be added to Article I reading:

"The right of workers to organize and bargain collectively shall not be impaired."

Collective bargaining by labor accords with our National and State public policy. The proposed new section accords express constitutional recognition to that policy. This provision does not, nor is it intended to restrict legislative action aimed at eliminating or curbing any labor union abuses which may manifest themselves and which require corrective legislative action.

This is a moment of deep significance in the history of our State. This convention is faced with an opportunity to make a great step forward in the continuing progress and development of American constitutional democracy. Adoption of the amendments which we propose will, we believe, breathe a new vitality and meaning into our revered Bill of Rights. It will be a guiding torch for other States to follow. Respectfully we commend it for the deliberations of this convention.

Respectfully submitted,

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