Supreme Court of the United States

JESSE C. ADKINS, et al., Constituting the Minimum Wage Board of the District of Columbia,

Appellants,

against

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

2

October Term, 1922.
No. 795 and
No. 796.

JESSE C. ADKINS, et al., Constituting the Minimum Wage Board of the District of Columbia,

3

Appellants,

against

WILLIE A. LYONS.

MOTION TO FILE PRINTED ARGUMENT AS AMICUS CURIAE.

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Now comes the State of New York by its Attorney-General, Carl Sherman, and respectfully moves this Honorable Court for leave to file as a friend of the Court, a printed argument, hereto annexed, in support of the constitutionality of minimum wage legislation for women and 5 minors, for the reasons that there is now pending in the Legislature of the State of New York a bill providing for a similar law, and because other laws have been enacted for the State of New York relating to women which may be ad-

versely affected by an affirmance of the judgment in the case at bar.

Dated: Albany, N. Y., February 14, 1923.

CARL SHERMAN,
Attorney-General of New York,
Capitol, Albany, N. Y.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

I, Edward G. Griffin, hereby certify that on the ..... day of February, 1923, I mailed in a prepaid envelope three copies of the within motion and proposed printed argument, to Challen D. Ellis, Esq., Attorney of Record for the Appellees in the above entitled appeals, at his office in the Southern Building, at Washington, D. C.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

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PRINTED ARGUMENT FOR STATE OF NEW YORK. 14

We apprehend that the issue presented is only as broad as is defined at pages XVII–XVIII of the main brief for the appellants. Yet, narrow as the issue really is, it comprehends within it the constitutionality of a proposed minimum wage law now pending in the Legislature of the State of New York; further, the implications found in 15 the second majority opinion of the Court below as necessarily following from the disapproval of such a statute, include laws of New York whereby contracts for employment with women

16 *Printed Argument for State of New York.*

are singled out for other special industrial protection.

The purpose of our argument is not to extend the application of the principles involved, but merely to recall and emphasize the immediate or ultimate effect of a condemnation of the statute
17 under review upon the system of legislation affecting working women in the most important industrial State. Consequently, we shall avoid all repetition and even elaboration of the arguments advanced in the briefs already filed and shall confine ourselves to the single purpose of a short recital of the situation in New York as it may differ or disclose exaggeration.
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Position of Industrial Women in New York State.

Of the 4,215,968 women in New York State 1,135,948 were gainfully employed as compared with Pennsylvania, the next largest industrial State, where 686,028 were so employed out of a total of 3,321,983 in the year 1920. 42.5 per cent
19 of the women employed in New York are under 25 years of age, and 80 per cent are of the child-bearing age. Only about 13 per cent are unionized. In New York City alone there are 32,590 factories with a yearly product of $5,260,707,577 in value. In the State are 2,786,112 foreign-born whites and in the Greater City 1,991,547. All
20 this suggests the presence of a high degree of exploitation. We, therefore, present a situation where the evils described in appellants' main brief are far more acute than in the States where minimum wage laws are already operating. For instance, in the minimum wage law, State of Massachusetts, there are 223,830 women em-

ployed in manufacturing industries, and in North Dakota, at the bottom of the scale, only 336. 21

The Bureau of Municipal Research has set the cost of living for saleswomen in New York City at $18.65; for cities of over 50,000 it is $16.99; and for the smaller cities it is $15.48. Yet, the reports of the State Labor Department show that 55 per cent of the employees of 5 and 10-cent stores were in receipt of wages under $13.99 and much lower than the standard set for the District of Columbia. 22

The cost of living fixed by the official State Factory Investigating Commission beginning in 1914 and corrected for the year 1921 is somewhat lower, being $17.06 a week for New York City; for cities of over 50,000 it is $15.55 and for smaller cities $13.69. Yet, in five typical industries the median wage for the City of New York in the peak year of 1919, as found by the State Labor Department is: Paper box, $11.00–$11.49; shirt and collar, $13.50–$13.99; confectionery, $9.50–$9.99; mercantile, $12.00–$12.49; cigars and tobacco, $15.00–$15.49. For the rest of the State the wage scale is uniformly lower. 23 24

The industrial sickness rate among women is high in New York as compared with men. The reports of the State Department of Labor show there are 154 cases of sickness of two weeks or more a 1,000 women as compared with 101 among men. Each man lost .9 days a week as compared with 1.6 days for women in 1921. Malnutrition, tuberculosis and the diseases of poverty are emphasized in our crowded cities, the deficiency in housing contributing. See ap- 25

pellants' main brief, pages, 1024–1028, 1031, 1038, 1075, 1070. *Marcus Brown Holding Co.* v. *Feldman* (*New York Housing Acts*), 256 U. S. 170. In support of the foregoing statistics, see New York State Department of Labor, Special Bulletin No. 109, Sept. 1921, Employment of Women in 5 and 10 cent stores; Study of Industrial Illness, New York State Department of Labor 1921; Reports New York Factory Investigating Commission, Preliminary, 1913, 1914, 1915; Bulletin, Consumers League, "Less Than a Living Wage," Dec. 1921. U. S. Census, Manufacturers 1919.

The wealth and prosperity of our State should afford no excuse for the continuation of parasitic industries thriving upon ignorant or pauper labor supported in part by subsidies from the State and charitably inclined.

Pending Legislation.

The Governor of New York addressed the Legislature in a message dealing with the minimum wage as applicable to this State. This we print at the end of this argument as "Addendum 1." He briefly reiterated his recommendations in his annual message this year. There have been introduced in the Legislature, Assembly Bill Int. No. 18 and Senate Bill Int. No. 523, identical bills, representing the Governor's proposals. The Assembly bill is printed at the end of this argument as "Addendum 2."

This bill, like the statute under review in the cases at bar, provides for a State Commission to fix a living wage for women and minors in industries after conference with the industries

affected, and forbids employment or the acceptance of employment at a less rate under criminal penalties. There are also pending other bills of somewhat different provisions, Assembly Bills Int. Nos. 421, 422.

Statutes of New York limiting " freedom of contract " of women in industry.

The Labor Law of the State of New York (Chapter 50, Laws 1921, Constituting Chapter 31 of the Consolidated Laws as amended), abounds with instances where contracts for the labor of women and minors are restricted. The following are typical:

§ 146. Women and children may not engage in the operation of dangerous machinery and processes enumerated in detail, of which the operation of circular or band saws and power printing presses are suggestive.

§ 148. Women may not be employed until four weeks after childbirth.

§ 172. Women may not be employed more than fifty-four hours a week or nine hours a day, or six days a week. No woman may be employed between ten at night and six o'clock in the morning.

We submit, the argument of the appellants demonstrates that the health, welfare and safety of women and minors are protected in no different degree by these statutes, limiting the " liberty of contract " than by a minimum wage law.

In conclusion, we call attention to the action of the Court of Appeals of New York in dealing with a similar question of social legislation aris-

ing in the case of *People* v. *Charles Schweinler Press* (1915,) 214 N. Y. 395.) This case is cited generally by the appellants at page XXXIX of their main brief, but is not discussed in the application we desire to give it. The statute there under review, forbade women from working in factories between ten at night and six in the morning. A law similar in result had been declared unconstitutional by the Court of Appeals in *People* v. *Williams*, 189 N. Y. 131, only eight years before. Yet, the Court in refusing to regard the earlier case as stare decicis gave among its reasons, the information since gained in New York and other states and countries as to the adverse effect of night work upon the health and welfare of women, Chief Judge Hiscock said at pages 411–412:

> " Especially and necessarily was there lacking evidence of the extent to which during the intervening years the opinion and belief have spread and strengthened that such night work is injurious to women; of the laws, as indicating such belief, since adopted by several of our own states and by large European countries, and the report made to the legislature by its own agency, the factory investigating commission, based on investigation of actual conditions and study of scientific and medical opinion that night work by women in factories is generally injurious and ought to be prohibited. * * * * * * * * * *
>
> So, as it seems to me, in view of the incomplete manner in which the important ques-

tion underlying this statute — the danger to women of night work in factories — was presented to us in the *Williams* case, we ought not to regard its decision as any bar to a consideration of the present statute in the light of all the facts and arguments now presented to us and many of which are in addition to those formerly presented, not only as a matter of mere presentation, but because they have been developed by study and investigation during the years which have intervened since the *Williams* decision was made. There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question as that of public health or disease than formerly prevailed. Particularly do I feel that we should give serious consideration and great weight to the fact that the present legislation is based upon and sustained by an investigation by the legislature deliberately and carefully made through an agency of its own creation, the present factory investigating commission. * * *"

The same Factory Investigating Committee created in 1912 investigated the question of minimum wages for women and minors and made a recommendation concerning the subject during the year 1915 (Fourth Report of Factory Investigating Commission for 1915 Vol. I, pages 47-48.)

46 *Printed Argument for State of New York.*

The *Charles Schweinler Press* case was brought here upon writ of error and argued, but the appeal was dismissed because there was no final judgment in the state courts, 241 U. S. 618.

THE JUDGMENT APPEALED FROM
47 SHOULD BE REVERSED.

Albany, N. Y., Feb. 15, 1923.

CARL SHERMAN,
Attorney-General of New York.

EDWARD G. GRIFFIN,
Deputy Attorney-General.

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