

FERGUSON v SKRUPA

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372 US 726, 10 L ed 2d 93, 83 S Ct 1028, 95 ALR2d 1717.

APPEARANCES OF COUNSEL

William M. Ferguson argued the cause for appellants.
Lawrence Weigand argued the cause for appellee.
Briefs of Counsel, p. 1113, *infra*.

OPINION OF THE COURT

Mr. Justice Black delivered the opinion of the Court.

In this case, properly here on appeal under 28 USC § 1253, we are asked to review the judgment of a three-judge

Headnote 1 District Court enjoining, as being in violation of the Due Process Clause of the Fourteenth Amendment, a Kansas statute making it a misdemeanor for any person to engage "in the business of debt ad-

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justing" except as "an incident to 'the lawful practice of law in this state.'" The statute defines "debt adjusting" as "the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon."

The complaint, filed by appellee Skrupa doing business as "Credit Advisors," alleged that Skrupa was engaged in the business of "debt adjusting" as defined by the statute,

that his business was a "useful and desirable" one, that his business activities were not "inherently immoral or dangerous" or in any way contrary to the public welfare, and that therefore the business could not be "absolutely prohibited" by Kansas. The three-judge court heard evidence by Skrupa tending to show the usefulness and desirability of his business and evidence by the state officials tending to show that "debt adjusting" lends itself to grave abuses against distressed debtors, particularly in the lower income brackets, and that these abuses are of such gravity that a number of States have strictly regulated "debt adjusting" or prohibited it alto-

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gether.² The court found that Skrupa's business did fall within the Act's proscription and concluded, one judge dissenting, that the Act was prohibitory, not regulatory, but that even if construed in part as regulatory it was an unreasonable regulation of a "lawful business," which the court held amounted to a violation of the Due Process Clause of the Fourteenth Amendment. The court

1. Kan Gen Stat (Supp 1961) § 21-2464.

2. Twelve other States have outlawed the business of debt adjusting. Fla Stat Ann (1962) §§ 559.10-559.13; Ga Code Ann (Supp 1961) §§ 84-3601 to 84-3603; Me Rev Stat Ann (Supp 1961) c. 137, §§ 51-53; Mass Gen Laws Ann (1958) c. 221, § 46C; NJ Stat Ann (Supp 1962) 2A:99A-1 to 2A:99A-4; NY Penal Law (Supp 1962) §§ 410-412; Ohio Rev Code Ann (1962 Supp) §§ 4710.01-4710.99; Okla Stat Ann (Supp 1962) Tit 24, §§ 15-18; Pa Stat Ann (Supp 1961) Tit 18, § 4899; Va Code Ann (1958) § 54-44.1; W Va Code Ann (1961) § 6112(4); Wyo Stat Ann (1957) §§ 33-190 to 33-192.

Seven other States regulate debt adjusting. Cal Fin Code Ann (1955 and Supp 1962) §§ 12200-12331; Ill Stat Ann (Supp 1962) c. 161, §§ 251-272; Mich Stat Ann (Supp 1961) §§ 23.630(1)-23.630(18); Minn Stat Ann (1947 and 1962 Supp) §§ 332.04-332.11; Ore Rev Stat (1961) §§ 697.610-697.992; RI Gen Laws (Supp 1962) §§ 5-42-1 to 5-42-9; Wis Stat Ann (1957) § 218.02. The courts of New Jersey have upheld a New Jersey statute like the Kansas statute here in question. *American Budget Corp. v Furman*, 67 NJ Super 134, 170 A2d 63, *affd per curiam*, 36 NJ 129, 175 A2d 622 (1961).