Marquette Law Review

Volume 42
Issue 3 *Winter 1959*

Article 9

Contracts: Insurer's Breach: Application of Rest. Contracts Sec.318

Rupert J. Groh Jr.

These cases will seemingly be upset by the Supreme Court only if it finds that the *Jenks* decision was founded upon the principles of fundamental justice.[41] If the Court should find that the *Jenks* decision states a rule which is the very fiber of due process and not merely a new rule for the federal judiciary,[42] the conscientious objector cases will meet with the Court's displeasure. Quite possibly the *Jenks* statute will be called unconstitutional since it restricts a ruling which is an expression of due process. If such a result should occur, it is quite possible that the *Jenks* ruling would be extended to pretrial disclosure and to disclosure of grand jury testimony. The better opinion seems to be that since the Supreme Court did not mention due process, it was merely exercising its rule-making power.[43] If this opinion is correct, the cases discussed here will probably not be overruled. Nevertheless, the *Jenks* decision has not been relegated to the history books by the new statute and it will continue to arouse a great deal of discussion and controversy.

ROBERT ULRICH

Contracts—Insurer's Breach—Application of Rest. of Contracts §318—Plaintiff was the beneficiary under a fifteen year endowment policy with family income provisions taken out by her deceased spouse. On the original application, insured received a 20-year endowment policy with family income provisions for a twenty year term, dated February 1, 1939. A few months after receipt of this policy, insured made application to convert the policy to the 15-year endowment with the income provisions for fifteen years. The

---

41 United States v. Consolidated Laundries Corp., 159 F. Supp. 860, at 868 (S.D. N.Y. 1958). See also 56 Mich. L. Rev. 314, at 316 (1957).

42 In United States v. Consolidated Laundries Corp., 159 F. Supp. 860, at 868 (S.D. N.Y. 1958), Judge Palmieri states: "The constitutionality of 18 U.S.-C.A. 3500 (Supp. V.) has been implicitly recognized by the Second Circuit in United States v. Miller, 248 F. 2d 163, *cert. denied,* 355 U.S. 905 (1957), in which the Court held that upon remand the procedure to be followed in producing documents would be that established by the statute." In footnote 15, the Judge states: "There is no indication that either the *Jenks* or *Gordon* decisions rested on a constitutional basis."

43 *Supra* note 41.

44 In a recent decision, Scales v. United States, 260 F. 2d 21 (4th Cir. 1958) which appeared subsequent to the writing of this article, the 4th Circuit Court of Appeals passed upon the question of the constitutionality of subsection (c) of the new statute. The Court stated that the procedure to be followed under subsection (c) of the statute does not violate due process of law, but is merely a procedural regulation within the power of Congress to enact. The Court seems to withdraw somewhat from the language of the *Jenks* case. It says: "The standard set by *Jenks,* 353 U.S. at 669, that justice requires no less than that the defense be entitled to see the reports to determine what use may be made of them *is satisfied [by the new statute] and justice requires no more.*" [Italics ours]. The rest of the *Jenks* statute has not been passed upon but from the language of the Court in this case, it seems probable that the statute will weather attacks on the grounds of its constitutionality, providing the United States Supreme Court agrees with the lower courts.

policy, as amended, was dated May 31, 1939. When the policy was issued, however, the company issued a 15-year endowment with family income provisions for 20 years. Insured died in 1945 with all premiums paid to date, at which time Plaintiff sent the policy with proof of death to the Defendant, John Hancock Mutual Life Insurance Company. Insurer acknowledged receipt of the policy and began paying Plaintiff the monthly payments under the income provision up to and including the payment of February 1, 1954,[1] at which time Defendant offered the lump sum payment on the endowment policy but refused to make further income payments. Plaintiff sought to recover the income payments for five more years according to the policy. The Defendant based its refusal on an alleged error in writing the contract, saying that it never isued a policy in which the income benefits extended over a period longer than the period for premium payments on the main policy.

The district court held that the company was bound by the contract as written, and that the application was not a part of the contract. It was also mentioned that the insured neither knew, nor could have known of the alleged error, and the decision did not include a finding of mistake. The significant feature of the trial court decision concerns the damages awarded. The court found the Defendant guilty of an anticipatory breach and awarded Plaintiff the lump sum due on the endowment policy plus the total value of the future payments, discounting the value of future interest. From this judgment the Defendant appealed. *Held:* Affirmed the findings of fact, but reversed as to damages, decreeing that the future installments were to be paid as they fell due.[2]

The court's discussion of damages and the applicability of the doctrine of anticipatory breach to a unilateral contract for the payment of money provides an opportunity for a discussion of anticipatory breach and damages as it applies to the limited field of insurance contracts.

The prevailing law on this subject is expressed in the Restatement of Contracts, Section 318[3] and is espoused by Williston.[4] Corbin takes a position against the rule.[5] He divides the insurance cases into two classes: "Those in which the insurer undertakes to pay a definite sum

[1] This would have been the end of the fifteen year period.
[2] John Hancock Mut. Life Ins. Co. v. Cohen, 254 F. 2d 417 (9th Cir. 1958).
[3] RESTATEMENT, CONTRACTS §318 (1932), amended 1948. "In the case (1) of a bilateral contract that has not become unilateral by full performance on one side, and (2) of a unilateral contract where the agreed exchange for the promise or for its performance has not been given, any of the following acts, done without justification by a promisor in a contract before he has committed a breach under the rule stated in sections 314-315, constitutes an anticipatory repudiation which is a total breach of contract . . . ."
[4] 5 WILLISTON, CONTRACTS §§1328-1329 (Rev. ed. 1937).
[5] 4 CORBIN, CONTRACTS §968 (1951).

of money at a specific future time or on the happening of a future event that is certain to occur, but the time of which is uncertain," and "disability and annuity policies, providing for periodic payments for an indefinite time, it being wholly impossible to determine in advance the total amount that may eventually have to be paid." Cases are cited from fifteen jurisdictions in support of his statement that under the first category above, "an action lies at once for anticipatory repudiation by an insurer, either for the recovery of premiums paid or damages."[6] In the second class the weight of authority is heavily against an action for anticipatory breach.[7] Apparently in only one jurisdiction was such an action allowed, and future installments recovered.[8] The landmark case is *New York Life Ins. Co. v. Viglas.*[9] Justice Cardozo's decision in the *Viglas* case[10] has had great influence, even though it was deprived of its authority by the decision in *Erie v. Thompkins.*[11] Perhaps some of its popularity is undeserved since the case was decided on the grounds of good faith mistake, and therefore no absolute repudiation. It does not state a hard and fast rule against the application of anticipatory breach to such cases.[12]

---

[6] *Ibid,* n. 35.

[7] 5 WILLISTON, CONTRACTS §1330A nn. 4 & 5 (Rev. ed. (1937); 4 CORBIN, CONTRACTS §969 (1951).

[8] Texas, Commercial Travelers Cas. Co. v. Dymke, 279 S.W. 2d 405 (Tex. Civ. App. 1955); American Cas. Co. v. McCuiston, 202 S.W. 2d 474 (Tex. Civ. App. 1947). In both cases an action for anticipatory breach was allowed on a disability policy, and future installments were recovered as damages.

[9] 297 U.S. 672 (1936). In this action for the anticipatory breach of a disability policy the relief sought was denied, and the case of Federal Life Ins. Co. v. Rascoe, 12 F. 2d 693 (6th Cir. 1926) was expressly overruled. In the Rascoe case, Plaintiff was entitled to disability payments upon proof of total disability every thirty days. After making payments for seven months, Defendant insurer refused to make further payments. The court held that the insurer had repudiated the contract, and avoided the rule later set forth in the Restatement, Contracts §318 (1932), by holding the contract to be bilateral with a continuing obligation, the continuing obligation being the requirement that insured furnish monthly evidence of continuing disability. The court said that public policy required the insured to maintain only one suit for all damages.

[10] 297 U.S. 672 (1936).

[11] 304 U.S. 64 (1938).

[12] 297 U.S. 672, 679, 680, 682 (1936). "We have no thought to suggest an invariable rule whereby the full value of a bargain may never be recovered for any breach of contract falling short of repudiation or intentional abandonment. . . . Even then, the rights that are his may depend upon the grounds of the rejection or the nature of the default, whether intentional or wilfull. . . . On the other hand a party to a contract who has no longer any obligation of performance on his side, but is in a position of an annuitant or a creditor exacting payment from a debtor *may* be compelled to wait for the installments as they severally mature, just as a landlord may not accelerate the rent for the residue of the term because the rent is in default for a month or a year. (cases cited). . . ." Citing the distinction between the rule applicable to a contract for payment of money and the rule applicable for the performance of services or the delivery of merchandise, the court says, at 680, "The root of any valid distinction is not in the difference between money and merchandise or money and services. *What counts decisively is the relation between the maintenance of the contract and the frustrations of the end it was expected to subserve.* The ascertainment of this relation calls

An attempt to place the present case into one of Corbin's classifications shows the case to be a rather exceptional one. The case does not fit into Corbin's first class,[13] exemplified by most life insurance contracts in which a definite sum of money is payable at death or at the end of a specified period of time. Corbin states that the majority of the reported cases falling within his first classifiication allow the action for anticipatory breach. The cases cited in support of this assertion however, appear to be executory, and therefore not within the rule of Rest. of Contracts Section 318. The sum due in the present case is fixed, but the manner of payment is different, i.e., not a lump sum, but distributed over a period of time. In addition, the payment of the money is not contingent upon a specified future event or a specified future time, certain to occur, but uncertain as to time. Here the event has already happened, the death of the insured. The cases cited by Corbin involved wrongful refusal to accept payment of premiums,[14] wrongful cancellation of policies,[15] or attempts to alter the terms of the contract.[16] If a life insurance contract may be considered executory until a present duty of payment arises in the insurer, all of Corbin's cases may be considered such. On the other hand, the present case involves a fully executed contract. The premiums have been paid, and the present duty of the insurer has arisen as a result of the death of the insured. None of Corbin's cases were instituted on a fully paid and executed policy.[17]

---

for something more than the mechanical application of a uniform formula. To determine whether a breach avoids the contract as a whole, one must consider what is necessary to work out reparations in varying conditions." The essence of the decision is stated in the conclusion, at 682, "The declaration in the case at hand makes a showing of present breach. It does not make a showing of a breach so willful and material as to make acceleration of future benefits essential to the attainment of present reparation." Thus the finding of present breach seems to be makeweight argument, which will not be a binding factor where a willful and material breach is found.

[13] 4 CORBIN, CONTRACTS §968 (1951).

[14] Alabama Gold Life Ins. Co. v. Garmany, 74 Ga. 51 (1884); Speer v. Phoenix Mutual Life Ins. Co., 36 Hun. 322 (N.Y. 1885).

[15] Merrick v. Northwestern Nat'l Life Ins. Co., 124 Wis. 221, 102 N.W. 593 (1905); Am. Ins. Union v. Woodard, 118 Okla. 248, 247 Pac. 398 (1926).

[16] Fed. Life Ins. Co. v. Maxim, 70 Ind. App. 266, 117 N.E. 801 (1919); Ebert v. Mut. Reserve Fund Life Ass'n., 81 Minn. 116, 83 NW. 506 (1900).

[17] One of the cases cited by Corbin was also cited by Plaintiff in the present case, Caminetti v. Manierre, 23 Cal. 2d 94, 142 P.2d 41 (1943). In this case the insured held a non-cancellable disability policy when the insurer became insolvent. The court held that the inability to perform was equivalent to total repudiation and allowed the anticipatory breach action. The court in the present case responded by citing the rule laid down in two disability cases. Brix v. People's Mut., 2 Cal. 2d 446, 41 P. 2d 537 (1935), and Cobb v. Pacific Mut. Life Ins. Co., 4 Cal. 2d 565, 51 P. 2d 84 (1935). The *Brix* case was an action to recover future payments, which the court denied on the grounds that the insurer's breach did not work a breach of the entire contract, but affected the rights of the insured only in respect to the accrued payments. The court also said that there was no breach as to the future, since the payments were contingent upon continued disability. It is interesting to note that neither the good faith test, nor the approach of the *Rascoe* case, *supra* note 9, were men-

In spite of the similarity in the manner of payment, class two[18] is equally inapplicable for two reasons. 1. The payments in the present case are for a prescribed period of time as against the indefinite period in class two. Disability payments are conditioned on the inability of the insured to work, most commonly permanent and total disability. The policy in the present case is a life insurance policy, and there is no such condition which must be filled before the right to payment arises. 2. The total amount which will eventually be paid is fixed by contract, and is easily determined. No change in the health or circumstances will effect the amount which the plaintiff will receive.

Plaintiff above, attempted to prove its case for the anticipatory breach by basing it upon the reasons advanced by Corbin in class two. One of Corbin's fears in denying the action and the future damages here is that the insured will be forced by a hostile and uncooperative insurer to go into court to get every payment to which he is entitled.[19] The court in *Cobb v. Pacific Mutual Life Ins. Co.*[20] meets this argument by saying "It would seem that a reasonably sound business policy would of itself be a sufficient consideration to deter an insurer against practices which could not do otherwise than discredit it. Besides, the law ought to be able to offer relief where compensation is willfully and contumaciously withheld."[21] This statement seems to contain an implied threat to the insurance companies. If the policy behind the Restatement rule is to protect the debtor or one who must borrow from an acceleration of payments not provided for in the contract, the logic of the rule becomes apparent in the case of an individual who borrows from a loan company or purchase goods on a conditional sales contract which is financed by a financing house.[22] However, an

---

tioned. The *Cobb* decision involved an alleged misrepresentation on the application. The court there gave lip-service to the *Brix* decision and recited the Restatement rule, but a greater part of the opinion was devoted to the question of good faith. The court said at 88, "The installments as they become due are but debts. Yet if the insurer in *good faith* and with color of right challenges the good faith of the insured and fails to prevail in an action, he is required to pay a large gross amount, although the insured is suffering from a permanent progressive disease and will not probably live the period of expectancy that a person in normal health would live," and again at page 88, "It is admitted that there is some authority for the application of this rule in cases so clearly within the doctrine of anticipatory breach that there is no room for question, but at best it is a drastic rule and should not be applied to a contract in which the parties impliedly recognize the right of contest." What the court means by "an implied right of contest" is not clear, but there seems to be a strong basis for the conclusion that this court, like Justice Cardozo, does not wish to state an inflexible rule and in the proper fact situation would decide differently.

18 4 CORBIN, CONTRACTS §968 (1951).

19 4 CORBIN, CONTRACTS §969 (1951).

20 4 Cal. 2d 565, 51 P. 2d 84 (1935); see *supra* note 17.

21 *Id.* at 88.

22 Even here the borrower has little choice anymore, since most such contracts contain an acceleration clause in a pre-printed form, so the benefit of the rule to the borrower is negligible.

insurance company obviously is not the debtor of the insured in the above sense, and does not need the protection that the Restatement rule affords to the commercial borrower. In addition, the insurance company writes the contract and the prospective insured has no bargaining power in deciding its terms.

The bad faith argument appears frequently in the disability cases, and it seems that it would be an important consideration in life insurance cases where the payments are to be made periodically. Since the condition precedent to the obligation of payment is death, it is more unlikely that a good faith dispute will arise when death is the condition than when the condition is proof of permanent and total disability. In five states[23] there has been legislative efforts which apparently are in response to this problem. These statutes are designed to prevent insurance companies from arbitrarily denying the insured the fruits of his contract. The Tennessee statute[24] does not refer to any specific type of policy. Since it exempts good faith refusals, the penalty imposed does not seem unduly high, and even in the absence of good faith, the amount of the penalty will depend upon the actual injuries suffered.[25] The Tennessee legislature also enacted a legislative deterent to those who might seek to take advantage of Sec. 56-1105 at the expense of the insurance company, imposing a penalty on an insured who brings a claim in bad faith.[26]

The statutes of the four other states are similar with the exception that none have a provision to discourage the bringing of false claims. The Arkansas statute[27] limits the recovery on the penalty of twelve

[23] Tennessee, Louisiana, Missouri, Arkansas, and Georgia.

[24] TENN. CODE ANN. §56-1105 (1955). "Additional liability upon insurers for failure to pay promptly insurance losses when refusal is not made in good faith.

"The insurance companies of this state, and foreign insurance companies and other persons doing an insurance business in this state, in all cases when a loss occurs and they refuse to pay the same within sixty (60) days after a demand shall have been made by the holder of the policy on which said loss occurred, shall be liable to pay the holder of said policy, in addition to the loss and interest thereon, a sum not exceeding twenty-five (25%) percent on the liability for said loss; provided, that it shall be made to appear to the court or jury trying the case that the refusal to pay said loss was not in good faith, and that such failure to pay inflicted additional expense, loss, or injury upon the holder of said policy; and, provided, further that such additional liability, within the limit prescribed, shall, in the discretion of the court or jury trying the case, be measured by the additional expense, loss, and injury thus entailed."

[25] In King v. Mut. Life Ins. Co. of N.Y., 114 F. Supp. 700 (E.D. Tenn. 1953), the statutory penalty was imposed on an insurer in a disability case. In specifically denying the requested future payments, the court said at 702, "This remedy is not allowance of damages for anticipatory breach of the insurance contract It is impliedly a recognition that cases will arise where insurance companies will not act in good faith in their refusal to pay accrued insurance benefits. For such cases the statute provides a recoverable penalty of twenty-five percent of the amount recovered as a result of the Plaintiff's lawsuit against the insured."

[26] TENN. CODE ANN. §56-1106 (1955).

[27] ARK. STAT. ANN. §66-514 (1947).

percent plus reasonable attorney's fees if the claim is not paid within the time stated in the policy after proof of loss (or death) has been made. An interesting feature of the Arkansas law is that good faith is not mentioned, and is not a defense for the insurer. This act has been upheld as constitutional,[28] but on its face it seems to impose a strict liability on the insurer. The Georgia statute[29] provides for a penalty up to 25 percent of the amount of the claim plus attorney's fees if a claim is not paid within sixty days, *if bad faith appears.* The Louisiana act[30] has different penalties depending upon the type of policy held. If an insurer fails to make payment within sixty days after proof of death on a life policy, *without just cause,* a penalty of six percent interest from the date of proof is imposed. In health and accident policies a penalty of double the amount of the benefits during the period of delay plus attorney's fees fixed by the court, is levied against the insurer if he does not pay within thirty days after the claim has been made. The Louisiana legislature has taken a page from tort negligence law in determining whether the punitive measures should be imposed; that is, there will be a penalty unless grounds exist, in the opinion of the court or jury, which would put a reasonable and prudent business man on his guard. This is a slight modification of the Tennessee provision, since the decision will be based not upon whether or not the insurer was in good faith in denying the claim, but whether there were reasonable grounds upon which to base a denial. In Missouri[31] the court may penalize the insurer up to ten percent and reasonable attorney's fees on any type of insurance policy, where it appears that the company has vexatiously refused to pay the claim.

The Kentucky courts have devised an installment judgment,[32] similar to specific performance, which seems to be a satisfactory solution, but it has not been adopted in other jurisdictions. Although this type of judgment was criticized in an earlier California case,[33] the

28 Life and Cas. Ins. Co. of Tenn. v. McCray, 291 U.S. 566 (1934). The decision was written by Justice Cardozo and is not significantly inconsitent with his decision in the *Viglas* case. See also, Trammel, *One State's Experience With The Statutory Remedy for Insurer's Delays, A Problem in Payment,* 10 Ark. L. Rev. 439 (1956).

29 GA. CODE ANN. §56-706 (1953 Revision).

30 LA. REV. STAT. §§22:656-22:658 (1950).

31 MO. REV. STAT. §375.420 (1949).

32 Equitable Life Assur. Soc'y of U.S. v. Branham, 250 Ky. 472, 63 S.W.2d 498 (1933), and Prudential Ins. Co. of America v. Hampton, 252 Ky. 145, 65 S.W.2d 980 (1934).

33 Although these cases were criticized in Brix v. Pacific Mutual, discussed in *supra* note 17, the court in the present case awarded appreciably the same judgment, decreeing that "the future installments shall be paid when they fall due, together with the final lump sum payment." 254 F.2d at 427. A strong argument can be set forth for this type of judgment since it will not have same effect as an acceleration on the insurer, but will give the insured a respite from starting a new suit as each payment falls due.

result in the present case bears a strong resemblance to the installment judgment without calling it such. Corbin approves of this type of relief in cases where there is extreme difficulty in making a reasonable estimate of probable future damages.[34] However, he criticizes the error into which some courts have fallen by failing to distinguish between specific performance and anticipatory breach. He also disapproves of the reference, in anticipatory breach actions, to "acceleration of payments" and "acceleration of maturity," when describing the effect of the judgment.[35]

To allow the action for anticipatory breach, on the other hand, may give rise to problems of policy in cases such as the one under discussion. One factor to be considered in the life insurance cases is the intent of the insured in making the contract. If the insured has contracted to have the money paid in installments, the action under consideration may produce the very result that the insured desired to avoid. For example, he may not want a large sum of money placed in the hands of his widow or other beneficiary, who may be inexperienced in business matters. Another argument against the action becomes apparent when the relationship of the parties is considered. In the present case, as in most life insurance cases, the beneficiary is a mere third party donee beneficiary, and has given up nothing, the payments being a gratuity. The insured under the disability policy seems to have a more justifiable reason for recovery on grounds of an anticipatory breach since he is an active party to the contract, and has actually given up something in that he has made the premium payments. It would follow then that the insured in the latter case has a greater interest to protect than the donee beneficiary of the life policy. Of course, if the latter were a creditor beneficiary his interest would be on a par with the disabled insured.

CONCLUSION

Although the *Cohen* case lies in the twilight zone between the oft-

[34] 4 CORBIN, CONTRACTS §969 (1951).

[35] 4 CORBIN, CONTRACTS §965 (1951). Specific performance is an equitable remedy which the courts apply almost exclusively to contracts for the sale of land, or when an article of a peculiar and unique nature or value is concerned. Anticipatory breach is an action at law. Because of the similarity of result, when the contract is one for the payment of money, courts are hesitant to give the legal remedy. Corbin says, "It is merely an accidental circumstance that where the contractual duty is a duty to pay money, the performance that is expressly promised is identical in character with the performance that is required by a judgment for money damages." Anticipatory breach damages are for the present value of the full amount, and the Plaintiff can get a judgment for more than the actual value if he can prove the loss. This also serves to point out the error in referring to the damages as "accelerating the payments or date of maturity." The contract is not rewritten by the judgment so that the date of maturity is advanced. The true effect is that as a result of the defendant's breach by anticipatory repudiations, a present determination of the Plaintiff's probable future damages resulting from the repudiation, is made.

litigated poles of fixed-sum life insurance policies and the disability policies with periodic payment provisions, the decision offers encouragement to those who would like to see the rule of Section 318[36] relaxed in respect to insurance cases. The statutes of at least five states and the instalment judgments of Kentucky reflect an acute awareness, in some quarters, that it is the insured, and not the insurer, who is in need of protection. If, as Justice Cardozo[37] says in quoting the *Cobb*[38] case, the law can offer appropriate relief when an insurer withholds compensation in bad faith, then justice can be done. Whether this is done by statutory penalty, installment judgments, or by the invocation of the doctrine of anticipatory breach is immaterial, but the Plaintiff should not be denied a remedy in the other jurisdictions merely because a hard and fast rule exists. The old cliche, "When the reason for a rule ceases, the rule itself ceases," seems to apply with particular vigor here. In decreeing that the future payments are to be made as they fall due, it seems that the court has reached a satisfactory conclusion without damage to the rule.

RUPERT J. GROH, JR.

Defamation—Liability of Station Owners for Political Broadcasts—During the course of a political broadcast, a candidate for the United States Senate made libelous remarks concerning the Plaintiff corporation. The corporation brought suit for defamation against the station owners. The Defendants admitted that the speech was libelous per se but claimed that Section 315 of the 1934 Federal Communications Act[1] relieved them from liability. On appeal, the North Dakota Supreme Court upheld Defendant's contention of immunity. The court construed the prohibition against censorship in Section 315 to be an absolute prohibition which precluded a licensee from deleting even obviously libelous matter. Further, the court held that Section 315 granted complete immunity from liability for defamatory statements made by candidates, if such statements were germane to the political issues involved. *Farmers Educ. and Co-op Union of America, No. Dakota Div. v. WDAY, Inc.*, 89 N. W. 2d 102 (N.D. 1958).

Decisions of state courts, prior to this, have been in conflict as to

---

[36] See *supra* note 3.
[37] New York Life Ins. Co. v. Viglas, 297 U.S. 672, 681 (1936).
[38] Cobb v. Pacific Mut. Life Ins. Co., 4 Cal. 2d 565, 51 P.2d 84 (1935).
[1] 48 STAT. 1088 (1934), 47 U.S.C. §315 (1946). "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate."