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James Richard White

to the existing financing system relied only on wealth-created disparities, the primary problem facing education is the general lack of resources. The state does not presently have the resources to raise the level of statewide expenditures to the highest existing expenditure per pupil.[73] Therefore, the educational quality in the "better" school districts will probably suffer. Even under the concept of power equalization, overall educational quality could decline because of disenchantment with the public school system.

Rodriguez demonstrates the willingness of the courts to intervene when the political process does not respond to glaring inequalities. It is unfortunate that the legislature did not respond to the inequalities in the existing school financing system. Had the disparities in expenditures not been so severe, the courts would probably have never been asked to rule on the constitutionality of local school district financing. Constitutional decisions often provide inflexible rules in areas requiring flexibility and experimentation. *Rodriguez* is such a decision affecting the sensitive area of public education.

Emily Parker

Class B Stock: A Voting Control Device

Blackhawk Holding Corporation was organized under the Illinois Business Corporation Act in November 1963. The articles of incorporation authorized 3,000,000 shares of class A stock with a par value of $1.00 and 500,000 shares of class B stock without par value. The articles stated that the class B stock would not be entitled to dividends or distribution of assets upon liquidation of the corporation. By preorganization subscription, twenty-one promoters purchased 87,868 shares of class A stock at $3.40 ($298,751.20) and 500,000 shares of class B stock at ¼¢ ($1,250). The corporation, after registering the stock with the Illinois Securities Division, sold 500,000 shares of class A stock to the general public at $4.00 per share.[1] In August 1964, the class A split two-for-one, increasing the number of outstanding shares to 1,175,736. The corporation sold additional shares so that by June 1968 there were 1,237,681 shares of class A and 500,000 shares of class B outstanding. At this point the class B shares represented 28.78 percent of the total voting shares.[2] In 1967,

[73] The estimated dollar cost of equalizing expenditures per pupil in Texas to various percentiles would be: 50th percentile—40.9 million; 60th percentile—55.7 million; 70th percentile—92.5 million; 80th percentile—144.1 million; 90th percentile—263.4 million; 95th percentile—394.7 million. PRESIDENT'S COMMISSION ON SCHOOL FINANCE, COST OF EQUALIZING EXPENDITURES TO VARIOUS PUPIL PERCENTILE LEVELS, BY STATE (1972).

[1] The prospectus relating to this offering explained that every share of both class A and class B stock was entitled to one vote on all general matters. The election of directors was to be by cumulative vote. The prospectus also stated that all class B stock had been fully subscribed. Under the title "Organization and Development," the prospectus explained that the 21 promoters "by virtue of a $300,001.20 investment, have control of the corporation having an initial capitalization of $2,000,000.00 after this offering." Stroh v. Blackhawk Holding Corp., 117 Ill. App. 2d 301, 253 N.E.2d 692, 694 (1969).

[2] The court points out that "the Class B stock [is] less than ¼ of the total number of shares outstanding after the public offering and that the promoters have at least a 15% equity interest of their own funds in the corporation." Stroh v. Blackhawk Holding Corp.,

Edward Mills, a former director and attorney for the corporation, and three other men formed the Mondo Corporation, which contracted to purchase 52,138 class A shares and 221,645 class B shares. Prior to the June 10, 1968, annual stockholders' meeting, and in anticipation of a power struggle, a group of class A shareholders formed a shareholders' protective association, solicited proxies,[3] and attempted to enjoin voting of the class B shares. These shareholders contended that a share of stock representing only voting rights in a corporation was invalid. The trial court held that the class B shares were ultra vires and void *ab initio*. The appellate court reversed and remanded.[4] The case was appealed to the Supreme Court of Illinois. *Held, affirmed*: A corporation may issue stock with the sole right of voting, excluding any right to participate in surplus or profits, or in the distribution of assets. *Stroh v. Blackhawk Holding Corp.*, 48 Ill. 2d 471, 272 N.E.2d 1 (1971).

I. CORPORATE RELATIONSHIPS: A THREEFOLD CONTRACT

The "corporate charter is a contract of a threefold nature. It forms the basis for a contract between the state and the corporation, the corporation and its stockholders, and the stockholders inter sese."[5] The first two relationships are closely connected since the relationship between the state and the corporation has a very definite effect upon the relationship between the corporation and its shareholders. The appropriate statutory provisions in force at the time the articles of incorporation are adopted become effectively embodied in the articles of incorporation,[6] and, thus, affect the interrelationship between the state, the corporation, and its shareholders. Since the corporation obtains its being and powers from the state through legislative enactment,[7] and the corporate laws differ among the states,[8] a corporation is governed by its articles of incorporation and the statutes of the state of incorporation.

A key corporate characteristic has been the separation of management and ownership through the sale of corporate shares to the general public.[9] The rights and interests of the shareholder arising from this contract with the cor-

48 Ill. 2d 471, 272 N.E.2d 1, 7 (1971). Before the 1964 two-for-one split, the class B stock obviously did not meet the "less than $\frac{1}{3}$" of outstanding shares requirement of the Illinois Securities Division (500,000 class B shares as compared to 1,087,868 total outstanding shares). Equity contributions by holders of class B stock totaled $1,250, while the contributions by holders of class A stock equalled $2,000,000. The interest of class B stockholders was slightly below 15%, in violation of the equity requirement.

[3] At the 1968 meeting, the association voted 508,269 class A shares while management voted 380,916 class A shares; the association voted 51,549 class B shares while management voted 427,831 class B shares. The association sought cancellation of the class B stock and an injunction to prevent the class B shareholders from voting at the shareholders' meeting.

[4] Stroh v. Blackhawk Holding Corp., 117 Ill. App. 2d 301, 253 N.E.2d 692 (1969).

[5] Kreicker v. Naylor Pipe Co., 374 Ill. 364, 29 N.E.2d 502, 506 (1940). *See generally* 2 W. COOK, CORPORATIONS § 419 (5th ed. 1965).

[6] Western Foundry Co. v. Wicker, 403 Ill. 260, 85 N.E.2d 722 (1949); Kreicker v. Naylor Pipe Co., 374 Ill. 364, 29 N.E.2d 502 (1940).

[7] *See, e.g.*, Chicago Title & Trust Co. v. Central Republic Trust Co., 299 Ill. App. 483, 20 N.E.2d 351 (1939).

[8] For a list of factors to consider before incorporating, see H. HENN, LAW OF CORPORATIONS § 17 (2d ed. 1970).

[9] The stock certificate "has been the most seeable device in the successful separation of ownership from management that has occurred in American industry over the last century." Smith, *A Piece of Paper*, 25 BUS. LAW. 923 (1970).

poration are governed principally by state law.[10] Proportionate interests in the corporation with respect to (1) earnings, (2) net assets upon liquidation, and (3) control, are afforded the shareholder in most jurisdictions.[11]

Voting Rights. Illinois law has consistently required that voting rights be an attribute of stock ownership. The Illinois Constitution of 1870 provided that "every stockholder shall have the right to vote, in person or by proxy."[12] The 1954 statutory implementation of this constitutional mandate specified that "[t]he articles of incorporation shall not limit or deny the voting power of the shares of any class."[13] In 1957, the statute was amended to allow for issuance of preferred or special classes of shares with variations respecting redemption, dividends, convertibility, and preference as to dividends or assets upon liquidations; however, the section retained the requirement that each share have voting rights.[14] As stated in *Durkee v. People*,[15] the rationale for the voting requirement was to afford representation to minority stockholders.[16] Although there is some authority which has attempted to limit the provision to elections of directors,[17] there can be no doubt[18] that voting rights are an essential attribute of share ownership in Illinois.[19]

Shareholders have devised at least one method of achieving the separation of economic and voting rights that has been successful to a limited degree. A voting trust "is a device to concentrate shareholder control in one or a few persons who, primarily through the election of directors, can control corporate affairs."[20] The trustee votes the shares of various shareholders as a block, and

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[10] Hetherington, *Fact and Legal Theory: Shareholder, Managers, and Corporate Social Responsibility*, 21 STAN. L. REV. 248, 253 (1969).

[11] *See generally* H. HENN, *supra* note 8, § 117, at 157; Gibbons v. Mahon, 136 U.S. 549 (1889); United States v. Evans, 375 F.2d 730 (9th Cir. 1967); Himmel v. Commissioner, 338 F.2d 815 (2d Cir. 1964); *In re* Fechheimer Fishel Co., 212 F. 357 (2d Cir. 1914); Morris v. American Pub. Util. Co., 14 Del. Ch. 136, 122 A. 696 (Ch. 1923); Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937); Pronik v. Spirits Distrib. Co., 58 N.J. Eq. 97, 42 A. 586 (Ch. 1899); Barrick v. Gifford, 47 Ohio St. 180, 24 N.E. 259 (1890); Ayub v. Automobile Mortgage Co., 252 S.W. 287 (Tex. Civ. App.—El Paso 1923), *rev'd*, 266 S.W. 134 (1924); Garey v. St. Joe Mining Co., 32 Utah 497, 91 P. 369 (1907).

[12] ILL. CONST. art. XI, § 3 (1870).

[13] ILL. REV. STAT. ch. 32, § 157.14 (Supp. 1971).

[14] *Id.*

[15] 155 Ill. 354, 40 N.E. 626 (1895).

[16] People v. Younger, 238 Ill. App. 502 (1925); Laughlin v. Geer, 121 Ill. App. 534 (1905).

[17] 1923-1924 REPORT OF ILLINOIS ATTORNEY GENERAL 370: "This section is an inhibition only against depriving stockholders of the right to vote for directors or managers. It does not require that all stock shall have voting powers upon all questions."

[18] *See* Gidwitz v. Lanzit Corrugated Box Co., 20 Ill. 2d 208, 170 N.E.2d 131 (1960); Wolfson v. Avery, 6 Ill. 2d 78, 126 N.E.2d 701 (1955); People *ex rel.* Watseka Tel. Co. v. Emmerson, 302 Ill. 300, 134 N.E. 707 (1922); Luthy v. Ream, 270 Ill. 170, 110 N.E. 373 (1915); Laughlin v. Johnson, 230 Ill. App. 25 (1923); Colten v. Williams, 65 Ill. App. 466 (1896).

[19] Statutory provisions vary throughout the states. For example: DEL. CODE ANN. tit. 8, § 151(a) (1953): "Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be . . . with . . . or without voting powers . . . ." TEX. BUS. CORP. ACT ANN. art. 2.29A (1969): "Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this Act and except as otherwise provided by Article 5.13."

[20] J. LEAVITT, THE VOTING TRUST 3 (1941).

the maximum amount of time during which such a trust is allowed to exist is governed by statute. This separation of voting rights and economic benefits, even under close judicial scrutiny, has been the subject of vigorous attack. Those advocating the doctrine of shareholder or corporate democracy[21] seek to return control[22] of the corporation to its owners, the individual shareholders, by the reunion of the shareholder's ownership and his power to vote.[23] Courts have generally recognized the strong public policy encouraging shareholder democracy, as demonstrated by the strict interpretation given to statutory requirements for enforcement of devices such as the voting trust.[24]

Proprietary Interest. Shares are statutorily defined in Illinois as "the units into which the proprietary interests in a corporation are divided."[25] No decisions speak to the specific language of this statute.[26] However, in other jurisdictions it has been held that a shareholder, by reason of share ownership, has the right to participate in surplus profits and assets upon dissolution.[27] The leading case in this area, *Lehrman v. Cohen*,[28] comes from Delaware. This case involved a shareholder challenging the validity of a new class of stock and subsequent election of a president. The new class of stock was one share with a ten-dollar par value. Prior to issuance of the new class, class AD, two other classes existed, AC and AL, each of which elected two directors to the board. Class AD was issued with the right to elect one director in an attempt to prevent deadlocks between the holders of AC stock and the holders of AL stock. As distinguished from the class B stock in *Stroh*, the holder of class AD stock in *Lehrman* had the right to share in distributions of assets upon liquidation or dissolution, but only to the extent of the ten-dollar par value of the stock. The court held that the class AD stock was not violative of public policy because it had voting

[21] *See generally* F. EMERSON & B. GRAHAM, SHAREHOLDER DEMOCRACY (1954); Ford, *Share Characteristics Under the New Corporation Statutes*, 23 LAW & CONTEMP. PROB. 264 (1958); Garrett, *Attitudes on Corporate Democracy—A Critical Analysis*, 51 NW. L. REV. 310 (1956); Garrett, *Practicing Lawyer's Viewpoint*, 26 BUS. LAW. 545 (1970); Hetherington, *supra* note 10; Lewis, *Toward a General Theory of Social Responsibility for Business*, 25 SW. L.J. 667 (1971); Schwartz, *Corporate Responsibility in the Age of Aquarius*, 26 BUS. LAW. 513 (1970); Manning, Book Review, 67 YALE L.J. 1477 (1958).

[22] Lewis described the decline of shareholder control as follows:

> [T]he erosion of the doctrine of pre-emptive rights, the limitations upon notions of ultra vires, and the elimination of the right to remove directors without cause were all viewed as steps in a parade of changes alienating the shareholder from a position of real power. Indeed, the entire course of legal change throughout the nineteenth and twentieth centuries . . . paralleled the economic development of the corporation, and tended in the direction of fewer limitations on corporate and management powers and greater separation between ownership and control.

Lewis, *supra* note 21, at 672.

[23] Manning, *supra* note 21, at 1486. One of the goals of the Securities Exchange Act of 1934 was to return the shareholder to power. H.R. REP. NO. 1383, 73d Cong., 2d Sess. §§ 3, 5 (1934).

[24] *See, e.g.*, Abercrombie v. Davies, 36 Del. Ch. 371, 130 A.2d 338 (Sup. Ct. 1957).

[25] ILL. REV. STAT. ch. 32, § 157.2-6 (Supp. 1971).

[26] *Cf.* Central Illinois Pub. Serv. Co. v. Swartz, 284 Ill. 108, 119 N.E. 990 (1918); Consolidated Coal Co. v. Miller, 236 Ill. 149, 86 N.E. 205 (1908); Porter v. Rockford, R.I. & St. L.R.R., 76 Ill. 561 (1875).

[27] Federal Employees Distrib. Co. v. United States, 206 F. Supp. 330 (S.D. Cal. 1962); United Grocers, Ltd. v. United States, 186 F. Supp. 724 (N.D. Cal. 1960); United States Radiator Corp. v. State, 208 N.Y. 144, 101 N.E. 783 (1913), *aff'd*, 151 App. Div. 367, 135 N.Y.S. 981 (1912).

[28] 43 Del. Ch. 222, 222 A.2d 800 (Sup. Ct. 1966).

rights, even though it had no "substantial participating proprietary interest in the corporation."[29]

II. STROH V. BLACKHAWK HOLDING CORP.

In *Stroh v. Blackhawk Holding Corp.* the Supreme Court of Illinois was faced with deciding whether a second class of common stock possessing only voting rights was a valid share of stock.[30] The important issue presented in *Stroh* was whether shares can be created without proprietary interests—the right to participate in profits and in assets upon liquidation. Here the answer was determined by interpreting the contractual relationships between the corporation and shareholder and the corporation and state legislative enactments.

The first step for the Illinois Supreme Court was statutory construction. When Blackhawk Holding Corp. was formed in 1963, the Illinois statute provided that: " 'Share' means the units into which the proprietary interests in a corporation are divided."[31] A cursory view of this statute might indicate that a right in profits and assets existed. The court pointed out, however, that the statute, as amended, reflected the enactment of the definition in the Model Business Corporation Act, which is simpler than that previously existing. There is "no change in legal effect."[32] The new statute, although worded differently, mirrored the language of the previous statute, which provided: " 'Shares' are the units into which the shareholder's rights to participate in the control of the corporation, in its surplus or profits, or in distribution of its assets, are divided."[33] The court held that the use of the word "or" indicated that the three rights were disjunctive.[34]

Very little Illinois case law has originated in this area.[35] Most of the relevant cases were decided around the turn of the century under authority of the 1870 Constitution and the Illinois statutes of 1901, which contained no provision or definition of "shares."[36] These cases were decided before the 1933 enactment,[37] which provided for the apparently disjunctive rights to participate in control, profits, and assets.

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[29] 222 A.2d at 806.

[30] The general rule is that a share of stock entitles the owner to a right in management, profits, and distribution of assets. *See* 11 W. FLETCHER, CYCLOPEDIA OF CORPORATIONS § 5083 (perm. rev. ed. 1971). Millar v. Mountcastle, 161 Ohio St. 409, 119 N.E.2d 626, 632 (1954), lists four other rights of the common shareholder: (1) to inspect the corporate books and records; (2) to subscribe for any additional shares offered [this preemptive right varies among the jurisdictions]; (3) to bring a shareholder's derivative suit; and (4) the duty to pay the corporation the amount of consideration for which the shares were authorized to be issued.

[31] ILL. REV. STAT. ch. 32, § 157.2-6 (Supp. 1971).

[32] 1 ILL. BUS. CORP. ACT ANN. 5, § 2-6 comment (2d ed.) (Supp. 1966).

[33] Law of July 13, 1933, ch. 32, § 157.2(f), [1933] Ill. Laws 31 (amended 1961).

[34] Justice Schaefer, dissenting, argued that too much emphasis was placed upon "or" as being disjunctive and cites as support John P. Moriarty, Inc. v. Murphy, 387 Ill. 119, 55 N.E.2d 281 (1944), and People *ex rel.* Watseka Tel. Co. v. Emmerson, 302 Ill. 300, 134 N.E. 707 (1922). This is weak support, especially in conjunction with § 157.15, providing that participation in earnings and assets, but not voting rights, are possible variables among the same class of shares. *See also* 1 MODEL BUS. CORP. ACT ANN. § 16, at 386 (1971).

[35] *See* notes 25, 26 *supra*, and accompanying text.

[36] *See* ILL. REV. STAT. ch. 32, §§ 1-28½ (1901).

[37] Law of July 13, 1933, ch. 32, § 2(f), [1933] Ill. Laws 308 (repealed 1954).

The principal case authority relied upon by the court in *Stroh* was *Lehrman v. Cohen*.[38] Yet two distinguishable features, which are of some significance, separate *Stroh* and *Lehrman*: (1) the governing statutes are different; and (2) the class AD stock in *Lehrman* had a proprietary interest in assets. Under Illinois statutes voting rights are essential to the validity of a corporate share.[39] However, the Delaware statute does not require that shareholders be given voting rights.[40] In *Lehrman* the class AD stockholder had a proprietary interest equal to the par value of the stock. Therefore, since the AD stockholder had no right to share in earnings, the Delaware court was upholding the validity of a share which possessed two of the three basic attributes. In *Stroh* no proprietary interest was given to the holders of class B stock. Hence, the court upheld the validity of shares which possessed only one of the three attributes.

Practical Implications. The interesting aspects of *Stroh* come not from its technical application of statutory law, but rather the effect it has upon areas touching its perimeter. Such areas involve the relation between shareholder voting and economic rights in the corporation. The decision may have a significant impact on voting trusts, the concept of shareholder democracy, and the separation of economic and voting rights in general.

In *Stroh* the class B stock was held not to be a voting trust, although the test for such, as set out in *Abercrombie v. Davies*,[41] technically was met. The first requirement is that the voting rights be separated from the other attributes of ownership. This requirement was fulfilled upon issuance of the stock, since the holders of the stock were given only voting rights. The second requirement is that the voting rights be irrevocable for a definite period of time. Under the Illinois statute[42] the voting rights of the stock could never be revoked. The third requirement is that the purpose must be to acquire voting control of the corporation. Certainly this must have been the purpose of the class B stock in *Stroh*, since the stock carried no other rights. Although Blackhawk Holding Corp. was a public corporation, the approximately thirty percent of the voting power which the class B stock represented amounted to almost certain control. The possible use of such stock to obtain voting control, rather than use of the more rigidly formalized voting trust is, perhaps, the most important single aspect of *Stroh*. *Stroh* relieves the corporate promoter of many headaches and uncertainties. Avoidance of the voting trust route for control eliminates many procedural requirements requisite to the establishment of a voting trust,[43] including the issuance of voting trust certificates, duration of the trust, powers and duties of the trustee, as well as familiarization with the differences between jurisdictions and state blue sky regulations. Control via class B stock is easily accomplished by a provision in the articles of incorporation, thus making it an extremely effective planning tool, as evidenced by *Stroh*.

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[38] 43 Del. Ch. 222, 222 A.2d 800 (Sup. Ct. 1966); *see* text accompanying notes 28, 29 *supra*.
[39] ILL. REV. STAT. ch. 32, § 157.14 (Supp. 1971).
[40] DEL. CODE ANN. tit. 8, § 151(a) (1953).
[41] 36 Del. Ch. 371, 130 A.2d 338 (Sup. Ct. 1957).
[42] ILL. REV. STAT. ch. 32, § 157.14 (Supp. 1971).
[43] *See* H. HENN, *supra* note 8, § 197.

Stroh also represents a frustration of the development of the concept of shareholder democracy. The class A shareholders found themselves totally ineffective and impotent against the virtually omnipotent management. On the other hand, the successful operation of today's industrial giants rests largely upon the separation of ownership and voting.[44] Development of America's vast industrial complex depended upon the separation of ownership and management, allowing a far greater accumulation of capital and specialization of functions (a technocratic[45] structure).

"Most shareholders of large corporations simply do not sufficiently identify themselves as owners to have the concerns of owners,"[46] and even if they do, they do not care to expend the time required to supervise the management of the corporation.[47] This was not the case in *Stroh*. There the class A shareholders were interested in more than just economic benefits per se; they sought to take part actively in management. However, their efforts were stymied by the greater voting power of the holders of the class B shares. The voting power of the "owners" was factually ineffective. The result in *Stroh* appears inequitable in light of the fact that the class A shareholders had contributed the majority of the capital of the corporation. Capital contributed by the class B shareholders amounted to only $1,250, compared to the $2,000,000 initial contribution of the class A stockholders. Therefore, the twenty-one promoters maintained control of the organization at a cost of $300,001.20 (87,868 class A shares at $3.40 each, plus 500,000 class B Shares at $\frac{1}{4}¢$ each)—less than thirteen percent of the total capital contributions. *Stroh* makes no attempt to minimize (or even recognize) this inequity.[48]

As suggested earlier, it may be argued that the average investor seeks economic benefits and is indifferent toward the exercising of his potential right of control over the corporation. Another argument, appropriate in *Stroh*, is that the investors were given a prospectus detailing the allocation of voting power; therefore, by their purchase of stock, the investors consented to such an allocation. However, this argument ignores the fact that their initial investment only demonstrated a favorable opinion of the present prosects of the business, and to that extent approved the voting allocation. But should that fact preclude the class B stockholders from ever having an effective voice in management?

What about the effect on class B shareholders? Or more specifically, what about the class B shares? What value does a share of stock have without the right to earnings and assets upon liquidation? Most financial analysts would point out that stock valuation is largely based upon the right to participate in

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[44] Garrett, *Attitudes on Corporate Democracy—A Critical Analysis*, 51 NW. L. REV. 310 (1956). *See also* Garrett, *Practicing Lawyer's Viewpoint*, 26 BUS. LAW. 545 (1970); Lewis, *supra* note 21, at 674.

[45] J.K. GALBRAITH, THE NEW INDUSTRIAL STATE (1967), originated the concept of the "technocratic" society.

[46] Lewis, *supra* note 21, at 674.

[47] *Id.*

[48] A shareholder has only three choices in protecting his interests: (1) sue the corporate management, (2) attempt to throw out the management, or (3) throw himself out by selling his shares. Manning, *supra* note 21, at 1483.

the earnings and assets of the company.[49] If this is true, why were the promoters interested in such a system? The answers fall somewhat outside the boundaries of fair play. First, this system allows the insiders to take unreasonable salaries and fringe benefits; their voting power placed them in a position to effectively defraud the other shareholders.[50] Secondly, acquiescence in such a system of voting control encourages the separation of proprietary interests from voting rights. This division permits the sale of voting control stock at a premium. By throwing in class B shares with the purchase of class A shares, the promoter-vendor could demand a highly exaggerated price (beyond the bounds of any fundamental or technical valuation) with the excess representing a premium paid for the control which the voting power represents. A similar arrangement was held invalid in *Perlman v. Feldman*,[51] in which the dominant shareholder and principal officer of a steel corporation sold, at a time of steel shortage, his controlling interest together with the right to control distribution of the steel. This officer was held accountable to the minority shareholders to the extent that the price paid represented payment for the right to control the corporation. Although *Perlman* represents an extreme factual situation, by analogy, the theory would appear to be applicable to *Stroh*. Finally, this device allows insiders a larger proportionate voice in the corporate management than their investment would seem to warrant. Again, the decision in *Stroh* falls short of a completely satisfactory answer.

III. CONCLUSION

Stroh represents the slippery ground upon which a court treads when it fails to consider the practical implication of its decision, although the decision may be technically correct. First of all, *Stroh* represents a side-step around the restrictions normally placed on a voting trust. Further, the court never comes to grips with the concept of shareholder democracy. Would public policy approve of the continuation of minimizing or eliminating the effectiveness of the shareholder's voting rights? Since Illinois requires that voting rights be given to each share, does it logically follow that the state should be willing to let this right become insignificant and largely illusory? And finally, have not the insiders been allowed to perpetrate a fraud by purchasing and maintaining control with such a trivial investment? Answers to these questions will be varied, depending on the importance given to complete shareholder democracy and the extent to which disclosure of vote distribution is allowed to override the shareholder's effective voice in management.

James Richard White

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[49] *See* J. COHEN & E. ZINBARG, INVESTMENT ANALYSIS AND PORTFOLIO MANAGEMENT 220 (1967); Consolidated Coal Co. v. Miller, 236 Ill. 149, 150, 86 N.E. 205, 206 (1908): "The shares have no value independently of the interest they represent in the franchise and property of the corporation."

[50] *Cf.* McDaniel v. Painter, 418 F.2d 545 (10th Cir. 1969); Maggiore v. Bradford, 310 F.2d 519 (6th Cir. 1962), *cert. denied*, 372 U.S. 934 (1963); Johnson v. American Gen. Ins. Co., 296 F. Supp. 802 (D.D.C. 1969).

[51] 219 F.2d 173 (2d Cir. 1955).