

1-19-1971

01-19-1971 Justice Stewart, Concurring and Dissenting

Potter Stewart
US Supreme Court Justice

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
✓ Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES Stewart, J.

No. 79.—OCTOBER TERM, 1970

Circulated: JAN 19 1971

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Stella Connell, Appellant, }
v. } On Appeal From the United
James M. Higginbotham } States District Court for
et al. } the Middle District of
Florida.

[January —, 1971]

MR. JUSTICE STEWART, concurring in part and dissenting in part.

The Court upholds as clearly constitutional the first clause of the oath as it comes to us from the three-judge District Court: "I will support the Constitution of the United States and of the State of Florida" With this ruling I fully agree.

As to the second contested clause of the oath, "I do not believe in the overthrow of the government of the United States or of the State of Florida by force or violence," I would remand to the District Court to give the parties an opportunity to get from the state courts an authoritative construction of the meaning of the clause. If the clause embraces the teacher's philosophical or political beliefs, I think it is constitutionally infirm. *Baird v. State Bar of Arizona*, ante, at — (concurring opinion); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 642; *Cantwell v. Connecticut*, 310 U. S. 296, 303-304. If, on the other hand, the clause does no more than test whether the first clause of the oath can be taken "without mental reservation or purpose of evasion," I think it is constitutionally valid. *Law Students Civil Rights Research Council, Inc. v. Wadmond*, ante, at 8-9. The Florida courts should, therefore, be given an opportunity to construe the clause before the federal courts pass on its constitutionality.