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## 02-02-1971 Memorandum to the Conference

Harry A. Blackmun

*Associate Justice of the US Supreme Court*

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February 2, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 79 - Connell v. Higginbotham

Dear Brethren:

Mr. Justice Harlan and I have not as yet indicated our votes in this case. Each of us is somewhat troubled and wonders whether the Florida certification procedure under Florida Appellate Rule 4.61, which the Court employed in Aldrich v. Aldrich, 375 U.S. 75 and 249 (1963) and 378 U.S. 540 (1964) and in Dresner v. City of Tallahassee, 375 U.S. 136 (1963) and 378 U.S. 539 (1964), would be of any assistance to us in this somewhat troublesome little case. Certification perhaps would accomplish directly what Mr. Justice Stewart has in mind and, in addition, might have the advantage of retaining jurisdiction here and of avoiding further cumbersome and time-consuming 3-judge procedure.

If this suggestion has any appeal for the Conference, a question somewhat along the following lines might be formulated: Does that portion of the oath prescribed for State employees by Fla. Stats. Ann. § 876.05(1) reading:

"I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence."

reach to any extent the prospective employee's political or philosophical beliefs or does it serve only as a measure

for determining whether the employee is able to take, without mental reservation or purpose of evasion, the preceding portion of the oath reading:

"I will support the Constitution of the United States and of the State of Florida"?

Sincerely,

H. A. B.