

1-15-1971

## 01-15-1971 Justice Burger, Per Curiam

Warren E. Burger  
*US Supreme Court Justice*

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No. 79 - Connell v. Higginbotham

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

Per Curiam.

From: The Chief Justice  
This is an appeal from an action commenced in the United States District Court for the Middle District of Florida challenging  
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Re-circulated to: \_\_\_\_\_  
States District Court for the Middle District of Florida challenging  
the constitutionality of sections 876.05 - 876.10 of Fla. Stat. Ann.,  
and the various loyalty oaths upon which appellant's employment as  
a school teacher was conditioned. The three-judge U. S. District  
Court declared three of the five clauses contained in the oaths to be  
unconstitutional, <sup>1/</sup> and enjoined the state from conditioning employ-  
ment on the taking of an oath including the language declared uncon-  
stitutional. The appeal is from that portion of the District Court  
decision which upheld the remaining two clauses in the oath: I do

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<sup>1/</sup>  
The clauses declared unconstitutional by the court below  
required the employee to swear: (a) "that I am not a member of the  
Communist Party"; (b) "that I have not and will not lend my aid,  
support, advice, counsel or influence to the Communist Party"; and  
(c) "that I am not a member of any organization or party which be-  
lieves in or teaches, directly or indirectly, the overthrow of the  
Government of the United States or of Florida by force or violence."

hereby solemnly swear or affirm (1) "that I will support the Constitution of the United States and of the State of Florida"; and (2) "that I do not believe in the overthrow of the government of the United States or of the State of Florida by force or violence."

On January 16, 1969, appellant made application for a teaching position with the Orange County school system. She was interviewed by the principal of Callahan Elementary School, and on January 27, 1969, appellant was employed as a substitute classroom teacher in the fourth grade of that school. Appellant was dismissed from her teaching position on March 18, 1969, for refusing to sign the loyalty oath required of all Florida public employees. Fla. Stat. Ann.

§ 876.05.

The first section of the oath upheld by the district court, requiring all applicants to pledge to support the Constitution of the

United States and the State of Florida, demands no more of Florida public employees than is required of all state and federal officers.

U. S. Const., Art. VI, § 3. The validity of this section of the oath would appear settled. See Knight v. Board of Regents, 269 F. Supp. 339, aff'd per curiam, 390 U. S. 36; Hosack v. Smiley, 276 F. Supp. 876, aff'd per curiam, 390 U. S. 744; Ohlson v. Phillips, 304 F. Supp. 1152, aff'd per curiam, 397 U. S. 317.

The second portion of the oath, approved by the court below, falls within the ambit of decisions of this Court proscribing summary dismissal from public employment without hearing or inquiry required by due process. Slochower v. Board of Education, 350 U. S. 551 (1956). Cf. Nostrand v. Little, 362 U. S. 474 (1960); Speiser v. Randall, 357 U. S. 513 (1958). Although beliefs are by no means irrelevant to action or the prediction of future acts, the automatic exclusion of a person

from public employment solely because of his refusal to subscribe to an oath making inquiry into his beliefs is impermissible. See West Virginia State Board of Education v. Barnett, 319 U.S. 624 (1943); Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940).

Affirmed in part, and reversed in part.