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01-20-1971 Justice Marshall, Concurring

Thurgood Marshall
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 Stewart
Mr. Justice White
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES Marshall, J.

No. 79.—OCTOBER TERM, 1970

Circulated: JAN 20 1971

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

[January —, 1971]

MR. JUSTICE MARSHALL, concurring.

I agree that Florida may require state employees to affirm that they "will support the Constitution of the United States and of the State of Florida." Such a forward-looking, promissory oath of constitutional support does not in my view offend the First Amendment's command that the grant or denial of governmental benefits cannot be made to turn on the political viewpoints or affiliation of a would-be beneficiary. I also agree that Florida may not base its employment decisions, as to state teachers or any other hiring category, on an applicant's willingness *vel non* to affirm "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."

However, in striking down the latter oath, the Court insists that "beliefs are by no means irrelevant to action or the prediction of future acts." This language suggests that the Court's objection runs, not against Florida's determination to exclude those who "believe in the overthrow," but only against the State's decision to regard unwillingness to take the oath as conclusive, irrebuttable proof of the proscribed belief. But in my view it simply does not matter what kind of evidence a State can muster to show that a job applicant "believes in the overthrow." For state action injurious to an individual cannot be justified on account of the nature of the individual's