81 S.Ct. 247
Supreme Court of the United States

B. T. SHELTON et al., Appellants,
v.
Everett TUCKER, Jr., etc., et al.
Max CARR et al., Petitioners,
v.
R. A. YOUNG et al.

Nos. 14, 83.
|
Argued Nov. 7, 1960.
|
Decided Dec. 12, 1960.

Synopsis
Actions in state court and federal court brought by schoolteachers and others challenging constitutionality of state statute requiring teachers in public schools to file affidavits giving names and addresses of all organizations to which they had belonged or contributed within the preceding five years as a prerequisite to employment. From adverse judgment of the United States District Court for the Eastern District of Arkansas, Western Division, 174 F.Supp. 351, the plaintiffs appealed and to review the judgment of the Supreme Court of Arkansas, 331 S.W.2d 701, affirming an adverse decree of the Chancery Court, First Division, Pulaski County, the plaintiffs petitioned for certiorari. The United States Supreme Court, Mr. Justice Stewart, held that statute compelling every teacher as a condition of employment in state-supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years, was unconstitutional as to teachers, who were hired on a year-to-year basis and were not covered by a civil service system and who had no job security beyond the end of each school year.

Judgments reversed.

Mr. Justice Frankfurter, Mr. Justice Harlan, Mr. Justice Whittaker, and Mr. Justice Clark, dissented.

Opinion

Mr. Justice STEWART delivered the opinion of the Court.

An Arkansas statute compels every teacher, as a condition of employment in a state-supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years. At issue in these two cases is the validity of that statute under the Fourteenth Amendment to the Constitution. No. 14 is an appeal from the judgment of a three-judge Federal District Court upholding the statute's validity, 174 F.Supp. 351. No. 83 is here on writ of certiorari to the Supreme Court of Arkansas, which also held the statute constitutionally valid. 231 Ark. 641, 331 S.W.2d 701.

The statute in question is Act 10 of the Second Extraordinary Session of the Arkansas General Assembly of 1958. The provisions of the Act are summarized in the opinion of the District Court as follows (174 F.Supp. 353):
'Act 10 provides in substance that no person shall be employed or elected to employment as a superintendent, principal or teacher in any public school in Arkansas, or as an instructor, professor or teacher in any public institution of higher learning in that State until such person shall have submitted to the appropriate ***481** hiring authority an affidavit listing all organizations to which he at the time belongs and to which he has belonged during the past five years, and also listing all organizations to which he at the time is paying regular dues or is making regular contributions, or to which within the past five years he has paid such dues or made such contributions. The Act further provides, among other things, that any contract entered into with any person who has not filed the prescribed affidavit shall be void; that no public moneys shall be paid to such person as compensation for his services; and that any such funds so paid may be recovered back either from the person receiving such funds or from the board of trustees or other governing body making the payment. The filing of a false affidavit is

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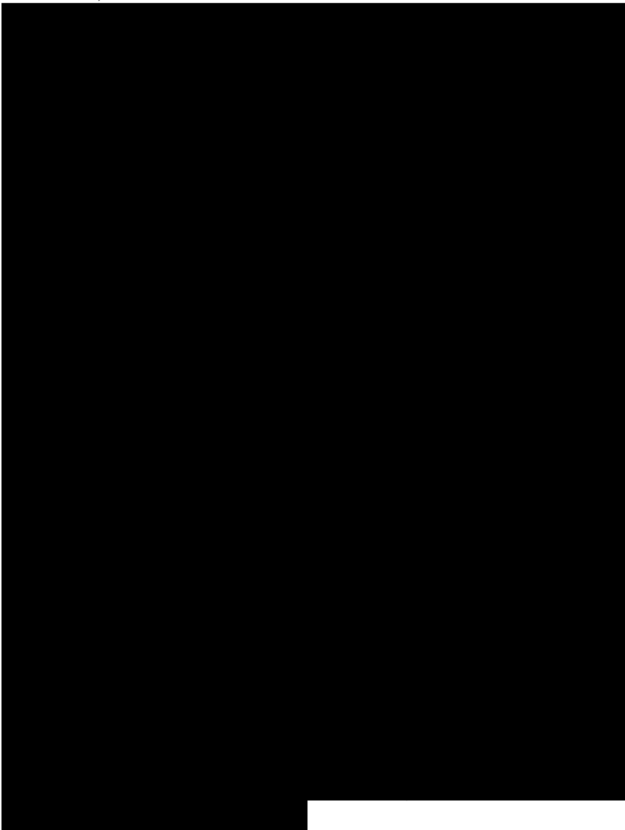
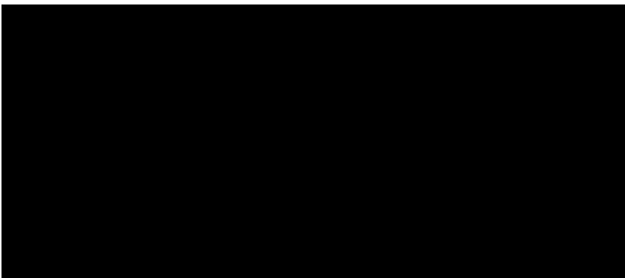
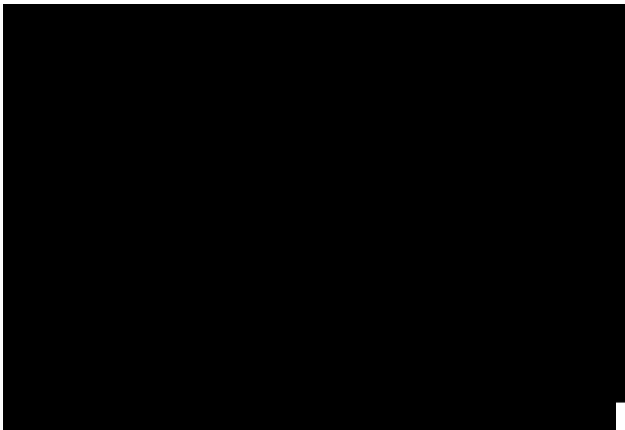
denounced as perjury, punishable by a fine of not less than five hundred nor more than one thousand dollars, and, in addition, the person filing the false affidavit is to lose his teaching license.' 174 F.Supp. 353—354.[1]

****249 *482** These provisions must be considered against the existing system of teacher employment required by Arkansas law. Teachers there are hired on a year-to-year basis. They are not covered by a civil service system, and they have no job security beyond the end of each school year. The closest approach to tenure is a statutory provision for the automatic renewal of a teacher's contract if he is not notified within ten days after the end of a school year that the contract has not been renewed. Ark.1947 Stat.Ann. s 80—1304(b) (1960); Wabbaseka School District No. 7 of Jefferson County v. Johnson, 225 Ark. 982, 286 S.W.2d 841.







I.

It is urged here, as it was unsuccessfully urged throughout the proceedings in both the federal and state courts, that Act 10 deprives teachers in Arkansas of their ***485** rights to personal, associational, and academic liberty, protected by the Due Process Clause of the Fourteenth Amendment from invasion by state action. In considering this contention, we deal with two basic postulates.

First. There can be no doubt of the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools, as this Court before now has had occasion to recognize. 'A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern.' Adler v. Board of Education, 342 U.S. 485, 493, 72 S.Ct. 380, 385, 96 L.Ed. 517. There is 'no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors.' Beilan v. Board of Education, 357 U.S. 399, 406, 78 S.Ct. 1317, 1322, 2 L.Ed.2d 1414.[4]

This controversy is thus not of a pattern with such cases as N.A.A.C.P. v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488, and Bates v. Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480. In those cases the Court held that there was no substantially relevant correlation between the governmental interest asserted and the State's effort to compel disclosure of the membership lists involved. Here, by contrast, there can be no question of the relevance of a State's inquiry into the fitness and competence of its teachers.[5]

****251** Second. It is not disputed that to compel a teacher to disclose his every associational tie is to impair ***486** that teacher's right of free association, a right closely

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allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society. De Jonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed. 278; Bates v. Little Rock, supra, 361 U.S. at pages 522—523, 80 S.Ct. at pages 416—417. Such interference with personal freedom is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made—those who any year can terminate the teacher's employment without bringing charges, without notice, without a hearing, without affording an opportunity to explain.

The statute does not provide that the information it requires be kept confidential. Each school board is left free to deal with the information as it wishes.[6] The record contains evidence to indicate that fear of public disclosure is neither theoretical nor groundless.[7] Even if there were no disclosure to the general public, the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy. Public exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority ***487** organizations, would simply operate to widen and aggravate the impairment of constitutional liberty.

The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. 'By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers * * * has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers.' Wieman v. Updegraff, 344 U.S. 183, 195, 73 S.Ct. 215, 221, 97 L.Ed. 216 (concurring opinion). 'Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate * * *.' Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S.Ct. 1203, 1212, 1 L.Ed.2d 1311.

II.

The question to be decided here is not whether the State of Arkansas can ask certain of its teachers about all their organizational relationships. It is not ****252** whether the State can ask all of its teachers about certain of their associational ties. It is not whether teachers can be asked how many organizations they belong to, or how much time they spend in organizational activity. The question is whether the State can ask every one of its teachers to disclose every single organization with which he has ***488** been associated over a five-year period. The scope of the inquiry required by Act 10 is completely unlimited. The statute requires a teacher to reveal the church to which he belongs, or to which he has given financial support. It requires him to disclose his political party, and every political organization to which he may have contributed over a five-year period. It requires him to list, without number, every conceivable kind of associational tie—social, professional, political, avocational, or religious. Many such relationships could have no possible bearing upon the teacher's occupational competence or fitness.

In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.[8] The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.[9]

In Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949, the Court invalidated an ordinance prohibiting all distribution of literature at any time or place in Griffin, Georgia, without a license, pointing out that so broad an interference was unnecessary to accomplish legitimate municipal aims. In ***489** Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 150, 84 L.Ed. 155, the Court dealt with ordinances of four different municipalities which either banned or imposed prior restraints upon the distribution of handbills. In holding the ordinances invalid, the Court noted that where legislative abridgment of 'fundamental personal rights and liberties' is asserted, 'the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.' 308 U.S. at page 161, 60 S.Ct. at page 151. In Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213, the Court said that '(c)onduct remains subject to regulation for the protection of society,' but pointed out that in each case 'the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom.' 310 U.S. at

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page 304, 60 S.Ct. at page 903. Illustrations of the same constitutional principle are to be found in many other decisions of the Court, among them, Martin v. Struthers, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313; ****253** Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574; and Kunz v. New York, 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280.

As recently as last Term we held invalid an ordinance prohibiting the distribution of handbills because the breadth of its application went far beyond what was necessary to achieve a legitimate governmental purpose. Talley v. California, 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559. In that case the Court noted that it had been 'urged that this ordinance is aimed at providing a way to identify those responsible for fraud, false advertising and libel. Yet the ordinance is in no manner so limited * * *. Therefore we do not pass on the validity of an ordinance limited to prevent these or any other supposed evils. This ordinance simply bars all handbills under all circumstances anywhere that do not have the names and addresses printed on them in the place the ordinance requires.' 362 U.S. at page 64, 80 S.Ct. at page 538.

***490** The unlimited and indiscriminate sweep of the statute now before us brings it within the ban of our prior cases. The statute's comprehensive interference with associational freedom goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competency of its teachers. The judgments in both cases must be reversed.

It is so ordered.

Judgments reversed.

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