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MANSFIELD V. WATERS

By Logan Kelly

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
NO. 08-5732

George Mansfield
Plaintiff-Appellee,

Versus

Ashley Waters
Defendant-Appellant

Appeal from the United States District Court
For the District of Columbia

Argued: February 18th, 2023
Decided: July 21st, 2023

Before OWENS, GOLDBERG, and SAMSON, Circuit Judges.

FACTS OF THE CASE

On **September 18th, 2021**, **George Mansfield** was dismissed from his position as a high school chemistry teacher in Deerfield Public School District in Washington DC. This decision was carried out by **Ashley Waters**, the superintendent of the district after **Mansfield** refused to sign an oath stating the following:

"I, _____, do hereby swear (or affirm) that I have not engaged in any illegal activity against the Constitution of the United States of America, and I have never participated in acts of sedition or treason to the federal government of the United States."

Waters claims to have introduced this oath for all teachers in the Deerfield Public School District (Kindergarten through 12th grade) due to concerns expressed by parents, who were fearful their children may be taught by instructors sympathetic to the ideologies of extremist groups, especially one of the 30+ groups involved in the January 6th United States Capitol attack. Some individuals in these groups have been convicted of sedition.

After **Waters** advocated for the oath before the school board, the oath requirement was unanimously passed by the board on **July 7th** and was scheduled to go into effect the first semester following summer break. According to the board's instructions, any teacher who refused to sign the oath before **September 1st** (the last day of summer break) would be summarily and permanently dismissed from their role.

George Mansfield was warned once a week by Superintendent **Ashley Waters** that if he did not sign the loyalty oath, she would have to fire him, in accordance with the new district rule. After over two weeks of refusal, however, **Ashley Waters** told Mansfield to pack his things and scheduled a temporary replacement teacher to fill his role for the rest of the semester.

Many of **Mansfield's** fellow teachers were disappointed with this development and said that **Mansfield** was a bright and energetic addition to the workplace. Some, though, expressed that they understood the necessity of the decision, and wondered if **Mansfield** might have subscribed to harmful ideologies. The students' parents, for the most part, agreed that this was exactly the sort of person they were anxious about, and speculated as to how much negative reinforcement from which their children might have been spared with this decision.

With the aid of a team of lawyers specializing in constitutional law, **Mansfield** has taken up a suit against the school district (represented by **Ashley Waters** in this case) on the basis that his constitutional rights were infringed by the requirement of a loyalty oath in his publicly-funded place of work.

QUESTIONS PRESENTED

1. Does the Deerfield Public School District oath requirement violate teachers' First Amendment rights to free speech, assembly, or religion? What about the Fifth or Fourteenth Amendment's Due Process Clause?

2. If it infringes on a fundamental right (e.g., free speech, assembly), does the Deerfield Public School District oath requirement pass the test of strict scrutiny?

3. Is the Deerfield Public School District oath unconstitutionally vague such that a person "of ordinary intelligence" would have to guess its meaning?

CONSTITUTIONAL PROVISIONS

First Amendment

Congress shall make no law respecting an establishment of religion, **or prohibiting the free exercise thereof**; **or abridging the freedom of speech**, or of the press; **or the right of the people peaceably to assemble**, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICABLE CASE LAW

Cole v. Richardson (1972)

In this 4-3 decision (which reversed a 3-judge District Court decision), the Supreme Court upheld the constitutionality of a Massachusetts loyalty oath required of public employees. The oath was challenged by a sociologist at Boston State Hospital on the grounds that it violated her First Amendment rights. The oath she was told to sign was written as follows:

I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the

Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method.

The majority opinion judged both clauses of this statement ("I will uphold and defend…" as well as "I will oppose the overthrow…") to amount essentially to a promise to respect constitutional law in their working capacities as public employees. And, since there is not a constitutionally protected right to overthrow the government by force, oath-taker's constitutional rights are not infringed by these clauses.

The dissenting opinion by Justice Douglas focuses on the obscurity of the second clause, and whether the final prepositional phrase modifies the verb "oppose" or the noun "overthrow." The majority, though, found this concern pedantic and argued that "men of common intelligence" would not have to speculate as to its meaning (*Whitehill v. Elkins)*. Still, Justice Douglas warned, "Test oaths are notorious tools of tyranny."

The Court developed a four-prong test for all future loyalty oath concerns, by which future oaths could be tested for their constitutionality. First, they must not infringe on First or Fourteenth Amendment rights. Second, employment may not be conditioned on an oath that someone has not participated in protected speech activities. Third, employment may not be conditioned on an oath that someone has not participated or will not participate in associational activities protected by the Constitution. Fourth, an oath cannot be so vague that a person of ordinary intelligence may have to guess at its meaning.

West Virginia State Board of Education v. Barnette (1943)

In this case, the Supreme Court ruled 6-3 that compelling schoolchildren to pledge allegiance to the flag was a violation of their First Amendment rights to freedom of speech and religion. This decision overturned *Minersville School District (Pennsylvania) v. Gobitis* (1940), in which the Supreme Court upheld (8-1) the expulsion of Jehovah's Witness children in a similar context. Unlike the earlier decision, the *Barnette* decision focused on not only freedom of religion but also the right of one not to speak against their will (argued from the freedom of speech). In his majority opinion, Justice Jackson stirringly wrote, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."

Knight v. Board of Regents of the University of the State of New York (1968)

The Supreme Court unanimously affirmed the decision of a District Court, which had upheld the constitutionality of a New York state law that required faculty members in public schools and tax-exempt private schools to sign an oath pledging support of the federal and state constitutions in the execution of their professional duties. Twenty-seven faculty members of Adelphi, a tax-exempt university, refused to sign the oath, contesting the legislation's legitimacy under the First, Fifth, Ninth, and Fourteenth Amendments.

Their three primary arguments were the following: (1) Their refusal to sign the oath was similar to the refusal to pledge allegiance in *West Virginia State Board of Education v. Barnette* (1943), in which the Supreme Court upheld the right of school children to not salute the flag and pledge allegiance. (2) The statute was unconstitutionally vague in that oath-takers could not know what acts and associations they were expected to avoid. (3) Educators need a work environment free from outside interference.

The District Court, in the decision affirmed by the Supreme Court, had the following rebuttal to each argument: (1) *Barnette* was decided based on the First Amendment, but not the Free Speech Clause. Instead, it was decided in favor of the students primarily due to the Freedom of Religious Expression Clause, as the students were adherents of the Jehovah's Witness faith, which prohibited expressions of reverence to images like flags. Also, the cases are dissimilar since the Pledge of Allegiance is more elaborate than the oath requested. (2) The language of the oath was clear and reasonable, unlike in some previously stricken vague oaths. (3) The loyalty oath did not interfere with their work since it did not restrict the political or philosophical beliefs of its members.

Keyishian v. Board of Regents of the University of the State of New York (1967)

In this case—perhaps the most cited in academic freedom debates—the Supreme Court ruled 5-4 that New York state laws requiring educators to sign loyalty oaths were unconstitutional. The case addressed **two** primary concerns. The first question was whether the State University of New York could require faculty members to sign a loyalty oath certifying they were not members of the Communist Party (and if they had ever been, to notify the President of SUNY) through 3022 of the Feinberg Law. Under the law, membership in the Communist Party was cause for termination. The second question was whether language banning "treasonous or seditious speech acts" in Sections 3021 and 105 of the Feinberg Law was unconstitutionally threatening First Amendment freedoms essential to academia.

The Supreme Court found that membership in a subversive organization was not sufficient cause for denial of employment at a public college or university. According to the majority opinion, "a law which applies to membership [only] without the specific intent to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of *guilt by association* which has no place here." The rights referenced above were the First Amendment rights to free speech and assembly.

The Court also found that vague bans on "treasonous or seditious speech acts" could have a pernicious effect on the free and open debate essential to academia and a free democracy more generally. The majority opinion called academic freedom "a special concern of the First Amendment which does not tolerate laws that cast a pall of orthodoxy over the classroom."

Brandenburg v. Ohio (1969)

In this Supreme Court case, the Court concluded that the charges against Brandenburg, a leader in the Ku Klux Klan arrested for breaking an Ohio syndicalism law, should be dropped. The law prohibited advocating "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform," as well as gathering "with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism." In their unanimous opinion, the Court used a two-pronged test to evaluate whether speech falls outside of First Amendment rights. According to this test, speech can be prohibited if it is (1) "**directed at** inciting or producing **imminent** lawless action," and (2) it is "**likely** to incite or produce such action."

Whitehill v. Elkins (1967)

This 6-3 case saw the Supreme Court strike down a loyalty oath requirement at the University of Maryland on account of it being "unconstitutionally vague." According to the majority opinion, the definition of "a subversive person"—being one who advocates or associates with those who advocate for the violent overthrow of the government—was much too general and "[made] possible oppressive or capricious application as regimes change." A quote from the majority opinion became a standard for oaths in future cases: "The oath required must not be so broad as to make men of common intelligence must speculate at their peril on its meaning."

The dissent, penned by Justice John Marshall Harlan II, argued that the context of this case fit that of Gerende v. Board of Supervisors of Elections of Baltimore (1951), in which the Supreme Court upheld the constitutionality of a Maryland loyalty oath for political candidates. He remarked on the SCOTUS's irresolute stance that "the only thing that does shine through the opinion of the majority is that its members do not like loyalty oaths."

Bolling v. Sharpe (1954)

This Supreme Court case held that schools within the District of Colombia could not continue to be segregated by race. The court came to this conclusion by asserting that the concepts of Equal Protection and Due Process "are not mutually exclusive," effectively applying the Equal Protection Clause of the 14th Amendment to the federal government (as opposed to only the states). This doctrine is called "reverse incorporation."

MAJORITY OPINION OF THE COURT OF APPEALS

Justice OWENS delivered the majority opinion of the Court, with **Justice GOLDBERG** concurring.

A. First Amendment Rights to Speech and Assembly

The First Amendment guarantees the right to speak and assemble freely. This right to speak freely, of course, necessarily entails a right to *think* freely. The right to speak as one wishes, of course, has its limits, but those limits certainly do not reach into one's personal ideologies or beliefs.

As reprehensible as extremist groups are to the American public—like those who aided in organizing the January 6th attack on the Capitol—it is not the business of a government-funded school to police the thoughts or private gatherings of its employees. This is especially true of schoolteachers, for whom there must exist a higher degree of freedom of thought. Schools are the lifeblood of debate and new thought in our societies, as emphasized in *Keyishian*. Leaders in the classroom must not be automatons, but rather shining examples of critical thinkers for their students—role models for the future leaders of the democratic system.

There is a real danger to these values present in the Deerfield oath. "Illegal activity" may sound intimidating, but anyone who has sped on the highway has participated in such. Within the context of opposing the Constitution of the United States, "illegal activity" may look like attending an unregistered protest for greater gun control (and thus, 'illegal activity against the 2nd Amendment'). While teachers should definitely be held to a high standard of civility and legal conscientiousness, the importance of the standards that this oath demands is outweighed by the necessity of protecting these educators' freedom of thought and expression.

What's more, the wording of the first clause of the oath makes it possible that persons may be denied employment for the sake of their private associations. Members of the Communist Party are technically breaking the law even today, by the pure fact of their membership, due to the Communist Control Act of 1954, which has technically never been repealed (despite never being enforced either). The mere association of these individuals is nevertheless "illegal," and thus any work they might conduct to influence alterations or amendments to the US Constitution would fall under the sights of this oath and would therefore put any teacher who was a member of the party in jeopardy of termination. It is unimaginable that any court could countenance such a politically charged system being the basis of teacher recruitment, so neither should it be the basis of teacher exclusion.

B. Failure to Pass Strict Scrutiny

In order to continue in its use despite these key fundamental constitutional infringements, the oath in question would have to pass a test of strict scrutiny. In other words, it will need to be proven that the oath achieves "a compelling state interest" and that it does so in a "narrowly tailored" way.

In the case at hand, there does not seem to be any distinct government interest being achieved by the oath. Those who pose a danger to the moral development of our children are the least likely to admit to subversive acts when asked. The most likely teachers-to-be who might confess to some sort of illegal act against the Constitution would be those honest but erring citizens who have, like the rest of us, had a less-than-perfect past. Or they may even be the civic leaders of days gone by, who—through exemplary civic disobedience—brought great change to our government in the face of its punishments.

What's more, the oath is not "narrowly tailored" to minimize infringement of liberties. It is unnecessarily applied to all teachers even though science teachers like Mansfield will likely never mention a political issue in their chemistry classrooms. This means the oath is an unnecessary infringement as well as an uncompelling one. Thus, it does not pass the test of strict scrutiny.

C. Excessively Vague

"Engaging in illegal activity against the Constitution of the United States of America" could be construed as any number of activities. The word "engaging" is especially vague, and it could mean trespassing in order to provide medical attention to a rioter, or even just littering a gum wrapper with the inner will or intent that that small act might contribute in some way to the overthrowal of democracy in the United States. The options for ridiculous ways in which this oath may be interpreted (and thus ways for fit employees to be denied this public job) are endless. As such, this fails even the criteria set by this Court in 1972 with *Cole v. Richardson* (the fourth disqualifying factor for loyalty oaths being over-breadth).

D. Conclusion

We hold that the requirement for George Mansfield to sign the loyalty oath *did* infringe on his First Amendment rights. Not only did it infringe on these rights, but it did so for uncompelling reasons, failing the test of strict scrutiny required for the infringement of fundamental rights. Furthermore, the oath was excessively vague; a reasonable person might guess at its meaning (*Whitehill*). We hereby overrule the District Court's ruling.

Reversed.

DISSENTING OPINION OF THE COURT OF APPEALS

Justice SAMSON dissenting.

A. First Amendment Rights to Speech and Assembly

The oath introduced by the superintendent is not unconstitutional at any level; this court has approved of many similar oaths in the past. In *Cole v. Richardson*, this Court upheld the constitutionality of a statewide law requiring an oath of loyalty to the Constitution—both in positive support of its functioning and positive support against its detractors—for all public employees.

In an even more relevant decision, *Knight v. Board of Regents of the University of the State of New York* (1968), this Court ruled that even university-level instructors can be forced to take a loyalty oath before continuing their employment. If it is important for anyone to have the highest standard of freedom of expression, these university instructors qualify for the category. High school teachers, however, are not contributing to research and high-level debate in the same way. They engage their students from a higher position, a rank of authority, that is ripe for abuse. Thus, preserving the highest levels of free speech amongst high school teachers is a lower priority than amongst university faculty, and simultaneously their positions are more dangerously abused.

Contrary to the arguments of the majority, the oath also does not effectively ban everyone from becoming a teacher. The language of "engagement" with "illegal activity opposed to the United States Constitution" is clearly in reference to treasonous and seditious acts, crimes which rightfully preclude anyone from stepping into the classroom in a position of influence over the children of our citizens. As in *Richardson*, the second clause exists for emphasis, and its existence should not be used to find alternative interpretations for the first.

B. Strict Scrutiny

The majority claim that this oath does not pass strict scrutiny is plainly untrue. In *Richardson*, this court upheld a law mandating all Massachusetts public employees take an oath to uphold the Constitution and oppose its overthrow. The application of the oath in the context of *Richardson* was much broader than in the context of the *Mansfield* case. This oath was in fact extremely well-tailored to the issue at hand. The government has a compelling interest that students are not turned into anti-government

radicals, especially in the District of Columbia, where the evidence of the consequences of this process has been clear. The population of employees who are most likely to affect this outcome is educators (as opposed to janitorial staff, administrators, IT specialists, etc.) and thus this oath was applied only to them. Even science teachers wield a massive amount of influence over the beliefs of their students; much time is spent in classrooms between the work at hand, and all sorts of irrelevant stories and lessons can be worked into a class where they don't belong. So, there is a compelling government interest, and the oath policy solves it without infringing on the rights of any additional populations. As the policy of a public school district, then, it passes strict scrutiny.

C. Clarity

No sentence in the English language will ever be perfectly clear to all readers, but this oath comes close enough. Any person "of ordinary intelligence" would have but a single interpretation of the meaning of this oath—satisfying the test established in *Whitehill v. Elkins*. They would ask themselves whether they've worked illicitly against the system on which the United States functions (i.e., by an insurrection or rebellion), established by the US Constitution, and, if they are bound by the honor of their word, would refuse to falsely take the oath, as some already have.

D. Conclusion

Loyalty oaths have a long and useful history in the United States. Since the Civil War and Lincoln's "ten percent plan," they have routinely protected our vulnerable populations from those who would otherwise do them harm. Oaths of loyalty are not unconstitutional in and of themselves, as can be seen by decades of case law affirming them. This district's oath policy does not infringe excessively on teachers' First Amendment rights, and if significant infringement was determined, there already exists a sufficiently "compelling need" and "tailoring" to justify the oath's continued use.

I respectfully dissent.