



Chapter 5: Close Up on the Supreme Court

Communist Party of Indiana v. Whitcomb, 1974

Case Summary

In 1972, the Communist Party of Indiana was denied a place on the presidential ballot because it refused to provide an affidavit, sworn under oath, that it did not advocate the forcible overthrow of the government. After losing a court challenge, the Party appealed to the Supreme Court.

The Court's Decision

The Court held that the loyalty oath requirement violated the First and Fourteenth Amendments. Justice William Brennan wrote the majority opinion, which was joined by four other justices. He argued that, although older Supreme Court cases had held that advocating violent political economic change was so dangerous that the government could outlaw it entirely, many more recent cases had changed this rule to give more weight to free speech. Brennan further held that the Constitution largely gives the States the power to supervise elections, but they must exercise this power constitutionally. A State may not limit a party's access to the ballot or restrict voters' constitutional right of association merely because members of the party believe in something.

Justice Lewis Powell wrote a concurring opinion in which three other Justices joined. He argued that the majority reached the right result in the case, but for the wrong reasons. In Powell's view, the Court should not have considered the more complex question whether the Indiana oath was constitutional. Since in this case the Republican and Democratic Parties were not required to submit affidavits accepting the oath, he wrote, there was no justification for placing a burden on the Communist Party that was not placed on the other established parties. Powell concluded Indiana had denied the plaintiffs the equal protection of laws under the Fourteenth Amendment.

***Can candidates
be forced to
sign oaths?***

More on the Case

The Supreme Court has considered other cases in which States attempted to exclude people from voting or to prevent them from running for elected office for a variety of reasons. In

Richardson v. Ramirez, 1974, the Court ruled that California could constitutionally prevent convicted felons from voting. Justice Thurgood Marshall dissented from the Court's opinion, arguing that a State cannot "strip ex-felons who have fully paid their debt to society of their fundamental right to vote without running afoul of the Fourteenth Amendment." Although some people worried that convicted felons might vote to undermine the criminal laws, Marshall relied on *Whitcomb* to argue that potential differences of opinion or matters of belief cannot be used to exclude anyone from the electoral process.

In *Chandler v. Miller, 1997*, the Court reviewed a Georgia law requiring candidates for certain State offices to certify that they have received a negative result on a urinalysis drug test within 30 days before qualifying for nomination or election. Writing for the Court, Justice Ruth Bader Ginsburg found that the testing requirement unconstitutionally interfered with candidates' personal privacy. She relied on *Whitcomb* to support her argument that "States...enjoy wide latitude to establish conditions of candidacy for State office, but in setting such conditions, they may not disregard basic constitutional protections."

Questions for Discussion

1. What are the arguments for and against allowing the individual States to set criteria for candidates for State elective office? Which argument do you find more persuasive? Why?
2. Given the outcome in *Whitcomb*, how would you have decided the *Richardson* and *Chandler* cases? Why?