

Syllabus.

PARKER ET AL. v. COUNTY OF LOS ANGELES ET AL.

NO. 49. CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.*

Argued November 8, 1949.—Decided December 5, 1949.

A state court dismissed actions by civil service employees for relief against enforcement of a "loyalty" program by a county, without considering whether disclosure of information sought by a prescribed affidavit would have penal consequences, and its decision left in doubt whether it had passed on the validity under the Fourteenth Amendment of sanctions (if there were any) for failure to execute the affidavit. By a subsequent order, not involved in the judgments now before this Court, the county explicitly adopted sanctions for failure to execute affidavits; and the validity of this latter order was attacked for the first time in litigation still pending in the state courts. Since this latter litigation may be decided in favor of the employees on grounds of state law, *held*: The constitutional questions raised in these cases are not ripe for adjudication, and the writs of certiorari heretofore granted are dismissed. Pp. 328-333.

88 Cal. App. 2d 481, 199 P. 2d 429, certiorari dismissed.

A state trial court dismissed suits by certain county employees for relief against a so-called "loyalty test" prescribed by the county's Board of Supervisors. The State District Court of Appeal affirmed. 88 Cal. App. 2d 481, 199 P. 2d 429. The State Supreme Court denied discretionary review. This Court granted certiorari. 337 U. S. 929. *Writs of certiorari dismissed*, p. 333.

John T. McTernan argued the cause for petitioners in No. 49. With him on the brief was *Lee Pressman*.

*Together with No. 50, *Steiner v. County of Los Angeles et al.*, also on certiorari to the same court.

A. L. Wirin argued the cause for petitioner in No. 50. With him on the brief were *Fred Okrand*, *Edward J. Ennis*, *Osmond K. Fraenkel* and *Arthur Garfield Hays*.

Gerald G. Kelly argued the cause for respondents. With him on the brief was *Harold W. Kennedy*.

Briefs of *amici curiae* urging reversal were filed by *George Slaff* for the Los Angeles Area Council of the American Veterans Committee; *Loren Miller* for the National Lawyers Guild, Los Angeles and Hollywood Chapters; *Samuel A. Neuburger* for the Civil Rights Congress; and *Thomas R. Jones* for the Council on African Affairs, Inc.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

In No. 49, twenty-five classified civil servants of the County of Los Angeles brought an action in the Superior Court of that County, and in No. 50, suit was brought by one such employee. The respective plaintiffs sought relief against enforcement by the County and its officials of what is colloquially known as a loyalty test, and they did so for themselves and "in a representative capacity . . . on behalf of 20,000 employees of Los Angeles County similarly situated."

The plaintiffs, petitioners here, alleged that on August 26, 1947, the Board of Supervisors of the County of Los Angeles adopted as part of its "Loyalty Check" program the requirement that all County employees execute a prescribed affidavit. It consisted of four parts, fully set forth in the Appendix. By Part A, each employee is required to support the Constitution of the United States, and the Constitution and laws of the State of California; by Part B, he forswears that since December 7, 1941, he has been a member of any organization advocating the

forcible overthrow of the Government of the United States or of the State of California or of the County of Los Angeles, that he now advocates such overthrow, or that he will in the future so advocate directly or through an organization; by Part C, he is required to list his aliases; and by Part D, he is asked to indicate whether he has ever been "a member of, or directly or indirectly supported or followed" any of an enumerated list of 145 organizations. Asserting fear of penalizing consequences from the loyalty program, and claiming that the law of California and the Constitution of the United States barred coercive measures by the County to secure obedience to the alleged affidavit requirement, petitioners brought these actions. Demurrers to the complaints were sustained by the Superior Court and its judgments were affirmed by the District Court of Appeal for the Second Appellate District. 88 Cal. App. 2d 481, 199 P. 2d 429. After the Supreme Court of California denied discretionary review we brought the case here because, on the showing then before us, serious questions seemed raised as to the scope of a State's power to safeguard its security with due regard for the liberty guaranteed by the Due Process Clause of the Fourteenth Amendment. 337 U. S. 929. In view, however, of the circumstances that became manifest after the cases came to argument, we are precluded from reaching these constitutional issues on their merits.

To begin with, the California decision under review does not tell us unambiguously what compulsion, if any, the loyalty order of August 26, 1947, carried. It is unequivocally clear that the lower court refused to decide whether an employee who discloses his so-called "subversive" activities or connections may for that reason be discharged. It is not clear, however, whether, as petitioners contend, the lower court meant to hold that the

Board of Supervisors may discharge an employee who refuses to file an affidavit.¹ This ambiguity renders so doubtful whether an issue under the United States Constitution is before us that at most we would exercise jurisdiction to obtain clarification by the State court. See *Honeyman v. Hanan*, 300 U. S. 14; *Minnesota v. National Tea Co.*, 309 U. S. 551; *State Tax Comm'n v. Van Cott*, 306 U. S. 511; *Herb v. Pitcairn*, 324 U. S. 117. But the circumstances which were called to our attention after the cases reached us leave no doubt that the issues which led us to bring them here are not ripe for constitutional adjudication. *American Wood Paper*

¹ Clearly enough some discharges or demotions of classified employees by the Board of Supervisors are not final. The division of authority between the Board and the County Civil Service Commission is thus formulated by the lower court:

"In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and, thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void despite anything the appointing power can do about it.

"From what has so far been said, it is self-evident that neither the board nor its agents can discharge a civil service employee for any cause that the civil service commission finds insufficient. Accordingly, if in the view of the board of supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is 'subversive,' the discharge or attempt to discharge on that ground is of no effect if, on hearing, the commission holds otherwise.

Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the civil service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. . . ." 88 Cal. App. 2d 481, 493, 497, 199 P. 2d 429, 436, 438-39. See Los Angeles County Charter, Art. IX, § 34 (13) in Cal. Laws 1913, p. 1495, as amended, Cal. Stat. 1939, p. 3147.

Co. v. Heft, 8 Wall. 333, 131 U. S. xcii; *Commercial Cable Co. v. Burleson*, 250 U. S. 360.

As of July 20, 1948, nearly a year after the original loyalty order, all but 104 of the 22,000 officers and employees of the County had executed the prescribed affidavit. On that day, these noncomplying employees were advised that the Board of Supervisors had adopted an order providing (1) that unless they had executed Parts A, B and C of the affidavit by July 26 they would be discharged, and (2) that unless they had executed Part D by that time they would be discharged "if and when the loyalty test litigation now pending is finally concluded with a determination that the County was justified in requiring from its employees the information embodied in Paragraph 'D.'"²

This order was the first explicit announcement of sanctions by the Board in furtherance of its loyalty program. By July 26 the entire affidavit had been executed by all but 45 employees. Of these, 29 had executed only Parts A, B and C. Sixteen stood their ground against any compliance. They invoked their administrative remedy of review before the Civil Service Commission which decided against them. On June 24 of this year these sixteen discharged employees sought a writ of mandate from the Superior Court of the County of Los Angeles to review the decision of the Civil Service Commission, with a prayer for reinstatement and back pay. We are advised that this litigation is now pending in the Superior Court. The petitioners here, except one in No. 49, signed Parts A, B and C, and that petitioner is a party in the case before the Superior Court.

² The affidavit in the order of July 20, 1948, differed from the affidavit in the original order only in that Part B was elucidated to an extent not here relevant and a few organizations listed in Part D were omitted.

From this it appears that the California courts have before them for the first time since the inception of the loyalty program an order which expressly threatens sanctions. These sanctions are being challenged under State law as well as under the United States Constitution. For all we know the California courts may sustain these claims under local law.³ The present cases are here from an intermediate State appellate court because the State Supreme Court did not deem the records before it to present issues deserving of its discretionary review. The explicit sanctions of the modified order may lead the Supreme Court of California to pass on them should the litigation now pending in the lower courts go against the contentions of these petitioners. It is relevant to note that when claims not unrelated to those now urged before us, but based on State law, have come before the Supreme Court of California that tribunal has not been insensitive to them. See *Communist Party v. Peek*, 20 Cal. 2d 536, 127 P. 2d 889; *James v. Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329. If their claims are recognized by the California courts, petitioners would of course have no basis for asserting denial of a Federal right. It will be time enough for the petitioners to urge denial of a Federal right after the State courts have definitively denied their claims under State law.

Due regard for our Federal system requires that this Court stay its hand until the opportunities afforded by State courts have exhausted claims of litigants under

³ Article IX, § 41 of the Los Angeles Charter provides: "No person in the classified service, or seeking admission thereto, shall be appointed, reduced or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations." Cal. Laws 1913, p. 1496. Article I, §§ 1, 4, 9, 10, 16, 21 of the California Constitution contains safeguards against infringement of the rights at which petitioners claim the loyalty investigation strikes.

State law. This is not what is invidiously called a technical rule. The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity. Decent respect for California and its courts demands that this Court wait until the State courts have spoken with knowledge of the events brought to light for the first time at the bar of this Court. Since the writs must be dismissed because constitutional questions which brought these cases here are not ripe for decision, all subsidiary questions fall. See *Rescue Army v. Municipal Court*, 331 U. S. 549, 585; *Alabama State Fed. of Labor v. McAdory*, 325 U. S. 450; *C. I. O. v. McAdory*, 325 U. S. 472.

Dismissed.

MR. JUSTICE DOUGLAS took no part in the consideration or disposition of these cases.

APPENDIX.

The affidavit prescribed by the Board of Supervisors of the County of Los Angeles on August 26, 1947, as part of its "Loyalty Check" program is as follows:

OATH AND AFFIDAVIT

Department

A. OATH OF OFFICE OR EMPLOYMENT

I,, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well

and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence, except those specified as follows: and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows:

D. MEMBERSHIP IN ORGANIZATIONS

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

NAME	NAME
Abraham Lincoln Brigade.	After School Clubs.
Academic and Civil Rights Council of California.	Agitprop.
	American Artists Congress.

NAME

America for Americans.
 American Comm. for a Free
 Indonesia.
 American Comm. for Democracy
 and Intellectual Freedom.
 American Comm. for Protection
 of the Foreign Born.
 American Comm. to Save Refu-
 gees.
 Americans Communications Assn.
 American Communist Party.
 American Council on Soviet Re-
 lations.
 American Federation for Political
 Unity.
 American Friends of the Chinese
 People.
 American Guard.
 American League Against War
 and Fascism.
 American League for Peace and
 Democracy.
 American League of Christian
 Women.
 American Peace Mobilization.
 American Russian Institute.
 American Society for Technical
 Aid for Spain.
 American Student Union.
 American Veterans Comm.
 American Writers Congress.
 American Youth Congress.
 American Writers School.
 American Youth for Democracy.
 Anti-Axis Comm.
 Anti-Hearst Examiner.
 Anti-Nazi League.
 Anti-Nazi League of Hollywood.
 Anti-ROTC Committee.
 Arcos Limited.

NAME

Artist Front to Win the War.
 Arts Advisory Council.
 Authors League.
 Ballila.
 Bay Area Council Against Dis-
 crimination.
 California Conference for Demo-
 cratic Action.
 California Labor School.
 California Youth Legislature.
 Centro Anti-Communists.
 China Aid Council of American
 League for Peace and Democ-
 racy.
 Citizens Committee for Better
 Education.
 Citizens Comm. for Defense of
 Mexican-American Youth.
 Citizens Comm. to Free Earl
 Browder.
 Citizens Comm. to Support La-
 bors Right.
 Citizens No Foreign Wars Coali-
 tion.
 Civil Rights Congress.
 Civil Rights Council for North-
 ern California.
 Comintern.
 Comm. for Boycott Against
 Japanese Aggression.
 Comm. for Defense of Mexican-
 American Youth.
 Comm. for Support of S. W.
 Garson.
 Comm. Protesting Attacks
 Against the Abraham Lincoln
 Brigade.
 Comm. to Defend America by
 Keeping Out of War.
 Communist International.

NAME	NAME
Communist Party's Little Theatre.	Harry Bridges Defense Comm.
Communist Workers School.	Hold the Price Line Comm.
Communist Political Assn.	Hollywood Anti Nazi League.
Conference for Democratic Action.	Hollywood Cultural Commission.
Consumers National Federation.	Hollywood Community Radio Group.
Contemporary Theatre.	Hollywood Independent Citizens Comm. of Arts, Sciences and Professions.
Co-ordinating Commission to Lift Embargo (To Spain).	Hollywood League for Democratic Action.
Council for Pan American Democracy.	Hollywood Theatre Alliance.
Cultural and Professional Projects Assn.	Hollywood Writers Mobilization.
Congress of Mexican and Spanish-Mexican Peoples of U. S.	Humanist Society of Friends.
Daily Worker.	Independent Citizens Comm. of Arts, Sciences and Professions.
Democratic Youth Federation.	International Labor Defense.
Elizabeth Curley Flynn Club.	International Red Aid.
Elizalde Anti-Discrimination Comm.	International Workers Order.
Emergency Comm. to Aid Spain.	Jewish Peoples Committee.
Emergency Trade Union Conference to Aid Spanish Democracy.	John Reed Clubs.
Ex Combattanti Society.	Joint Committee for Trade Union Rights.
Farmer Labor Party.	Joint Anti-Fascists Refugee Committee.
Federation of Architects, Engineers, Chemists and Technicians.	League Against War and Fascism.
Field Workers School.	League for Democratic Action.
First Congress of Mexican and Spanish-American Peoples of U. S.	League for Peace and Democracy.
Friends of Soviet Russia.	League for American Writers.
Friends of Soviet Union.	League for Struggle for Negro Rights.
German-American Bund.	League of Women Shoppers.
Greater New York Emergency Conference on Inalienable Rights.	League to Save America First.
	Los Angeles County Political Commission.
	Los Angeles County Trade Union Commission.
	Mooney Defense Commission.

NAME	NAME
Marine Cooks and Stewards Union.	North American Commission to Aid Spanish Democracy.
Maritime Federation of the Pacific.	Pen and Hammer Club.
Mobilization for Democracy.	Peoples Council of America.
Motion Picture Cooperative Buyers Guild.	Peoples Front.
Motion Picture Democratic Committee.	Progressive Comm. to Rebuild the American Labor Party.
National Citizens Political Action Committee.	Refugee Scholarship and Peace Comm.
National Committee to Abolish the Poll Tax.	Second Annual California Model Legislature.
National Council on Soviet American Friendship.	Simon J. Lubin Society.
National Emergency Conference.	Social Problems Club.
National Federation for Constitutional Liberties.	Spanish Relief Committee.
National Negro Women's Council.	Student Rights Assn.
National Negro Congress.	United Farmers League.
National Students League.	United Federal Workers.
New Masses.	Western Workers.
New Theatre League.	Workers Alliance.
	World Committee Against War.
	Workers School.
	Young Communist League.
	The Young Pioneers.