

OSMAN ET AL. v. DOUDS, REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 12. Decided June 5, 1950.

Section 9 (h) of the National Labor Relations Act, as amended, 61 Stat. 146, 29 U. S. C. § 159 (h), pertaining to "non-Communist" affidavits, is valid under the Federal Constitution. *American Communications Assn. v. Douds*, 339 U. S. 382. Pp. 846-847. Affirmed.

In a suit brought by the appellants to enjoin the appellee from enforcing the provisions of § 9 (h) of the National Labor Relations Act, as amended, 61 Stat. 146, 29 U. S. C. § 159 (h), a three-judge District Court dismissed the complaint on the merits. On direct appeal to this Court, *affirmed*, p. 848.

*Victor Rabinowitz* and *Samuel A. Neuberger* for appellants.

PER CURIAM.

This case was heretofore held for, and presents the same issues involved in, *American Communications Association v. Douds*, and *United Steelworkers of America v. Labor Board*, decided May 8, 1950, 339 U. S. 382. In these cases the Court upheld the constitutionality of § 9 (h) of the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947, 61 Stat. 136, 146, 29 U. S. C. (Supp. III) §§ 141, 159 (h), which provides:

"No investigation shall be made by the [National Labor Relations] Board of any question affecting

commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under subsection (e) (1) of this section shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

With regard to that part of the section which is concerned with membership in, or affiliation with, the Communist Party, the Court holds the requirement to be constitutional. MR. JUSTICE BLACK dissents for reasons stated in his dissent in *American Communications Association v. Douds*, *supra*.

With regard to the constitutionality of other relevant parts of the section, the Court is equally divided. MR. JUSTICE MINTON joins in the views expressed by THE CHIEF JUSTICE, who was joined by MR. JUSTICE REED and MR. JUSTICE BURTON in the cases above cited. MR. JUSTICE BLACK, MR. JUSTICE FRANKFURTER and MR. JUSTICE JACKSON adhere to their opinions in those cases. MR. JUSTICE DOUGLAS joins the dissenting opinions of MR. JUSTICE BLACK, MR. JUSTICE FRANKFURTER and MR. JUSTICE JACKSON insofar as they hold unconstitutional the

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portion of the oath dealing with beliefs, and being of the view that provisions of the oath are not separable votes to reverse. He therefore does not find it necessary to reach the question of the constitutionality of the other part of the oath. The judgment of the District Court is therefore

*Affirmed.*

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

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REPORTER'S NOTE.

The next page is purposely numbered 901. The numbers from 848 to 901 were purposely omitted, in order to make it possible to publish the *per curiam* decisions and orders in the current advance sheets or "preliminary prints" of the United States Reports with *permanent* page numbers, thus making the official citations available immediately.

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