SUPREME COURT OF UNITED STATES

B. T. Shelton

Vs.

Everett Tucker, Jr.,

Nos. 14, 83.

Argued Nov. 7, 1960.

Decided Dec. 12, 1960.

Mr. Robert L. Carter, for appellants.

Messrs. Herschel H. Friday, Jr., Little Rock, Ark., and Louis L. Ramsay, Jr., Pine Bluff, Ark., for appellees.

Mr. Edwin E. Dunaway, Little Rock, Ark., for petitioners.

Messrs. Robert V. Light and Herschel H. Friday, Jr., Little Rock, Ark., for respondents.

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 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 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

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. § 80 1304(b) (1960); Wabbaseka School District No. 7 of Jefferson County v. Johnson, 225 Ark. 982, 286 S.W.2d 841.

The plaintiffs in the Federal District Court (appellants here) were B. T. Shelton, a teacher employed in the Little Rock Public School System, suing for himself and others similarly situated, together with the Arkansas Teachers Association and its Executive Secretary, suing for the benefit of members of the Association. Shelton had been employed in the Little Rock Special School District for twenty-five years. In the spring of 1959 he was notified that, before he could be employed for the 1959—1960 school year, he must file the affidavit required by Act 10, listing all his organizational connections over the previous five years. He declined to file the affidavit, and his contract for the ensuing school year was not renewed. At the trial the evidence showed that he was not a member of the Communist Party or of any organization advocating the overthrow of the Government by force, and that he was a member of the National Association for the Advancement of Colored People. The court upheld Act 10, finding the information it required was 'relevant,' and relying on several decisions of this Court, particularly Garner v. Board of Public Works of Los Angeles, 341 U.S. 716, 71 S.Ct. 909, 95 L.Ed. 1317; Adler v. Board of Education, 342 U.S. 485, 72 S.Ct. 380, 96 L.Ed. 517; Beilan v. Board of Higher Education, 357 U.S. 399, 78 S.Ct. 1317, 2 L.Ed.2d 1414; and Lerner v. Casey, 357 U.S. 468, 78 S.Ct. 1311, 2 L.Ed.2d 1423.2

The plaintiffs in the state court proceedings (petitioners here) were Max Carr, an associate professor at the University of Arkansas, and Ernest T. Gephardt, a teacher at Central High School in Little Rock, each suing for himself and others similarly situated. Each refused to execute and file the affidavit required by Act 10. Carr executed an affirmation3 in which he listed his membership in professional organizations, denied ever having been a member of any subversive organization, and offered to answer any questions which the University authorities might constitutionally ask touching upon his qualifications as a teacher. Gephardt filed an affidavit stating that he had never belonged to a subversive organization, disclosing his membership in the Arkansas Education Association and the American Legion, and also offering to answer any questions which the school authorities might constitutionally ask touching upon his qualifications as a teacher. Both were advised that their failure to comply with the requirements of Act 10 would make impossible their re-employment as teachers for the following school year. The Supreme Court of Arkansas upheld the constitutionality of Act 10, on its face and as applied to the petitioners. 231 Ark. 641, 331 S.W.2d 701.

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 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, [1952] USSC 26; 342 U.S. 485, 493[1952] USSC 26; , 72 S.Ct. 380, 385[1952] USSC 26; , 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, [1958] USSC 161; 357 U.S. 399, 406[1958] USSC 161; , 78 S.Ct. 1317, 1322, 2 L.Ed.2d 1414.

This controversy is thus not of a pattern with such cases as N.A.A.C.P. v. Alabama, [1958] USSC 150; 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488, and Bates v. Little Rock, [1960] USSC 19; 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.

Second. It is not disputed that to compel a teacher to disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society. De Jonge v. Oregon, [1937] USSC 3; 299 U.S. 353, 364[1937] USSC 3; , 57 S.Ct. 255, 260[1937] USSC 3; , 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 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, [1952] USSC 108; 344 U.S. 183, 195[1952] USSC 108; , 73 S.Ct. 215, 221[1952] USSC 108; , 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, [1957] USSC 84; 354 U.S. 234, 250[1957] USSC 84; , 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 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 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.

In Lovell v. Griffin, [1938] USSC 81; 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 Schneider v. State, [1939] USSC 134; 308 U.S. 147, 60 S.Ct. 146, 150[1939] USSC 134; , 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, [1940] USSC 84; 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 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, [1943] USSC 90; 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313; Saia v. New York, [1948] USSC 80; 334 U.S. 558, 68 S.Ct.

1148, 92 L.Ed. 1574; and Kunz v. New York, [1951] USSC 9; 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, [1960] USSC 34; 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.

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.

Mr. Justice FRANKFURTER, dissenting.

As one who has strong views against crude intrusions by the state into the atmosphere of creative freedom in which alone the spirit and mind of a teacher can fruitfully function, I may find displeasure with the Arkansas legislation now under review. But in maintaining the distinction between private views and constitutional restrictions, I am constrained to find that it does not exceed the permissible range of state action limited by the Fourteenth Amendment. By way of emphasis I therefore add a few words of the dissent of Mr. Justice HARLAN, in which I concur.

It is essential, at the outset, to establish what is not involved in this litigation:

(1) As the Court recognizes, this is not a case where, as in N.A.A.C.P. v. Alabama, [1958] USSC 150; 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488, and Bates v. Little Rock, [1960] USSC 19; 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480, a State, asserting the power to compel disclosure of organizational affiliations, can show no rational relation between disclosure and a governmental interest justifying it. Those cases are relevant here only because of their recognition that an interest in privacy, in nondisclosure, may under appropriate circumstances claim constitutional protection. The question here is whether that interest is overborne by a countervailing public interest. To this concrete, limited question—whether the State's interest in knowing the nature of the organizational activities of teachers employed by it or by institutions which it supports, as a basis for appraising the fitness of those teachers for the positions which they hold, outweighs the interest recognized in N.A.A.C.P. and Bates—those earlier decisions themselves give no answer.

(2) The Court's holding that the Arkansas statute is unconstitutional does not, apparently, rest upon the threat that the information which it requires of teachers will be revealed to the public. In view of the opinion of the Supreme Court of Arkansas, decision here could not, I believe, turn on a claim

that the teachers' affidavits will not remain confidential. That court has expressly said that 'Inasmuch as the validity of the act depends upon its being construed as a bona fide legislative effort to provide school boards with needed information, it necessarily follows that the affidavits need not be opened to public inspection, for the permissible purpose of the statute is to enlighten the school board alone.' 231 Ark. 641, 646, 331 S.W.2d 701, 704. If the validity of the statute depended on this matter, the pronouncement of the State's highest judicial organ would have to be read as establishing—the earlier view of the State Attorney General notwithstanding—that the statute does not authorize the making public of the affidavits. Even were the Arkansas court's language far more ambiguous than it is, it would be our duty so to understand its opinion, in accordance with the principle that 'So far as statutes fairly may be construed in such a way as to avoid doubtful constitutional questions they should be so construed.' Fox v. Washington, [1915] USSC 43; 236 U.S. 273, 277[1915] USSC 43; , 35 S.Ct. 383, 384[1915] USSC 43; , 59 L.Ed. 573.

(3) This is not a case in which Lovell v. Griffin, [1938] USSC 81; 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; Cantwell v. Connecticut, [1940] USSC 84; 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213; Saia v. New York, [1948] USSC 80; 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574; and Kunz v. New York, [1951] USSC 9; 340 U.S. 290, 71 S.Ct. 312, 95 L.Ed. 280, call for condemnation of the 'breadth' of the statute. Those decisions struck down licensing laws which vested in administrative officials a power of censorship over communications not confined within standards designed to curb the dangers of arbitrary or discriminatory official action. The 'breadth' with which the cases were concerned was the breadth of unrestricted discretion left to a censor, which permitted him to make his own subjective opinions the practically unreviewable measure of permissible speech.1 Nor is this a case of the nature of Thornhill v. Alabama, [1942] USSC 81; 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093, and Herndon v. Lowry, [1937] USSC 86; 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066,2 involving penal statutes which the Court found impermissibly 'broad' in quite another sense. Prohibiting, indiscriminately, activity within and without the sphere of the Fourteenth Amendment's protection of free expression, those statutes had the double vice of deterring the exercise of constitutional freedoms by making the uncertain line of the Amendment's application determinative of criminality and of prescribing indefinite standards of guilt, thereby allowing the potential vagaries and prejudices of juries, effectively insulated against control by reviewing courts, the power to intrude upon the protected sphere. The statute challenged in the present cases involves neither administrative discretion to censor nor vague, overreaching tests of criminal responsibility.

Where state assertions of authority are attacked as impermissibly restrictive upon thought, expression, or association, the existence vel non of other possible less restrictive means of achieving the object which the State seeks is, of course, a constitutionally relevant consideration. This is not because some novel, particular rule of law obtains in cases of this kind. Whenever the reasonableness and fairness of a measure are at issue—as they are in every case in which this Court must apply the standards of reason and fairness, with the appropriate scope to be given those concepts, in enforcing the Due Process Clause of the Fourteenth Amendment as a limitation upon state action—the availability or unavailability of alternative methods of proceeding is germane. Thus, a State may not prohibit the distribution of literature on its cities' streets as a means of preventing littering, when the same end might be achieved with only slightly greater inconvenience by applying the sanctions of the penal law not to the pamphleteer who distributes the paper but to the recipient who crumples it and throws it away. Hague v. C.I.O., [1939] USSC 117; 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423; Schneider v. State, [1939] USSC 134; 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Jamison v. Texas, [1943] USSC 61; 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869. Nor may

a State protect its population from the dangers and incitements of salacious books by restricting the reading matter of adults to that which would be harmless to the susceptible mind of a child. Butler v. Michigan, [1957] USSC 16; 352 U.S. 380, 77 S.Ct. 524, 1 L.Ed.2d 412. And see De Jonge v. Oregon, [1937] USSC 3; 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278; Talley v. California, [1960] USSC 34; 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559.3 But the consideration of feasible alternative modes of regulation in these cases did not imply that the Court might substitute its own choice among alternatives for that of a state legislature, or that the States were to be restricted to the 'narrowest' workable means of accomplishing an end. See Prince v. Massachusetts, [1944] USSC 52; 321 U.S. 158, 169—170[1944] USSC 52; , 64 S.Ct. 438, 443—444[1944] USSC 52; , 88 L.Ed. 645. Consideration of alternatives may focus the precise exercise of state legislative authority which is tested in this Court by the standard of reasonableness, but it does not alter or displace that standard. The issue remains whether, in light of the particular kind of restriction upon individual liberty which a regulation entails, it is reasonable for a legislature to choose that form of regulation rather than others less restrictive. To that determination, the range of judgment easily open to a legislature in considering the relative degrees of efficiency of alternative means in achieving the end it seeks is pertinent.

In the present case the Court strikes down an Arkansas statute requiring that teachers disclose to school officials all of their organizational relationships, on the ground that 'Many such relationships could have no possible bearing upon the teacher's occupational competence or fitness.' Granted that a given teacher's membership in the First Street Congregation is, standing alone, of little relevance to what may rightly be expected of a teacher, is that membership equally irrelevant when it is discovered that the teacher is in fact a member of the First Street Congregation and the Second Street Congregation and the Third Street Congregation and the 4—H Club and the 3—H Club and half a dozen other groups? Presumably, a teacher may have so many divers associations, so many divers commitments, that they consume his time and energy and interest at the expense of his work or even of his professional dedication. Unlike wholly individual interests, organizational connections—because they involve obligations undertaken with relation to other persons—may become inescapably demanding and distracting. Surely, a school board is entitled to inquire whether any of its teachers has placed himself, or is placing himself, in a condition where his work may suffer. Of course, the State might ask: 'To how many organizations do you belong?' or 'How much time do you expend at organizational activity?' But the answer to such questions could reasonably be regarded by a state legislature as insufficient, both because the veracity of the answer is more difficult to test, in cases where doubts as to veracity may arise, than in the case of the answers required by the Arkansas statute, and because an estimate of time presently spent in organizational activity reveals nothing as to the quality and nature of that activity, upon the basis of which, necessarily, judgment or prophesy of the extent of future involvement must be based. A teacher's answers to the questions which Arkansas asks, moreover, may serve the purpose of making known to school authorities persons who come into contact with the teacher in all of the phases of his activity in the community, and who can be questioned, if need be, concerning the teacher's conduct in matters which this Court can certainly not now say are lacking in any pertinence to professional fitness. It is difficult to understand how these particular ends could be achieved by asking 'certain of (the State's) teachers about all their organizational relationships,' or 'all of its teachers about certain of their associational ties,' or all of its teachers how many associations currently involve them, or during how many hours; and difficult, therefore, to appreciate why the Court deems unreasonable and forbids what Arkansas does ask.

If I dissent from the Court's disposition in these cases, it is not that I put a low value on academic

freedom. See Wieman v. Updegraff, [1952] USSC 108; 344 U.S. 183, 194[1952] USSC 108; , 73 S.Ct. 215, 220[1952] USSC 108; , 97 L.Ed. 216 (concurring opinion); Sweezy v. New Hampshire, [1957] USSC 84; 354 U.S. 234, 255[1957] USSC 84; , 77 S.Ct. 1203, 1214, 1 L.Ed.2d 1311 (concurring opinion). It is because that very freedom in its most creative reaches, is dependent in no small part upon the careful and discriminating selection of teachers. This process of selection is an intricate affair, a matter of fine judgment, and if it is to be informed, it must be based upon a comprehensive range of information. I am unable to say, on the face of this statute, that Arkansas could not reasonably find that the information which the statute requires—and which may not be otherwise acquired than by asking the question which it asks—is germane to that selection. Nor, on this record, can I attribute to the State a purpose to employ the enactment as a device for the accomplishment of what is constitutionally forbidden. Of course, if the information gathered by the required affidavits is used to further a scheme of terminating the employment of teachers solely because of their membership in unpopular organizations, that use will run afoul of the Fourteenth Amendment. It will be time enough, if such use is made, to hold the application of the statute unconstitutional. See Yick Wo v. Hopkins, [1886] USSC 197; 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220. Because I do not find that the disclosure of teachers' associations to their school boards is, without more, such a restriction upon their liberty, or upon that of the community, as to overbalance the State's interest in asking the question, I would affirm the judgments below.

I am authorized to say that Mr. Justice CLARK, Mr. Justice HARLAN and Mr. Justice WHITTAKER agree with this opinion.

Mr. Justice HARLAN, whom Mr. Justice FRANKFURTER, Mr. Justice CLARK and Mr. Justice WHITTAKER join, dissenting.

Of course this decision has a natural tendency to enlist support, involving as it does an unusual statute that touches constitutional rights whose protection in the context of the racial situation in various parts of the country demands the unremitting vigilance of the courts. Yet that very circumstance also serves to remind of the restraints that attend constitutional adjudication. It must be emphasized that neither of these cases actually presents an issue of racial discrimination. The statute on its face applies to all Arkansas teachers irrespective of race, and there is no showing that it has been discriminatorily administered.

The issue is whether, consistently with the Fourteenth Amendment, a State may require teachers in its public schools or colleges to disclose, as a condition precedent to their initial or continued employment, all organizations to which they have belonged, paid dues, or contributed within the past five years. Since I believe that such a requirement cannot be said to transgress the constitutional limits of a State's conceded authority to determine the qualifications of those serving it as teachers, I am bound to consider that Arkansas had the right to pass the statute in question, and therefore conceive it my duty to dissent.

The legal framework in which the issue must be judged is clear. The rights of free speech and association embodied in the 'liberty' assured against state action by the Fourteenth Amendment (see De Jonge v. Oregon, [1937] USSC 3; 299 U.S. 353, 364[1937] USSC 3; , 57 S.Ct. 255, 260[1937] USSC 3; , 81 L.Ed. 278; Gitlow v. New York, [1925] USSC 174; 268 U.S. 652, 672[1925] USSC 174; , 45 S.Ct. 625, 632[1925] USSC 174; , 69 L.Ed. 1138, dissenting opinion of Holmes, J.) are not absolute. Near v. Minnesota, [1931] USSC 154; 283 U.S. 697, 708[1931] USSC 154; , 51 S.Ct. 625, 628[1931] USSC 154; , 75 L.Ed. 1357; Whitney v. California, [1927] USSC 129; 274 U.S.

357, 373[1927] USSC 129; , 47 S.Ct. 641, 647[1927] USSC 129; , 71 L.Ed. 1095 (concurring opinion of Brandeis, J.). Where official action is claimed to invade these rights, the controlling inquiry is whether such action is justifiable on the basis of a superior governmental interest to which such individual rights must yield. When the action complained of pertains to the realm of investigation, our inquiry has a double aspect: first, whether the investigation relates to a legitimate governmental purpose; second, whether, judged in the light of that purpose, the questioned action has substantial relevance thereto. See Barenblatt v. United States, [1959] USSC 132; 360 U.S. 109, 79 S.Ct. 1081, 3 L.Ed.2d 1115; Uphaus v. Wyman, [1959] USSC 145; 360 U.S. 72, 79 S.Ct. 1040, 3 L.Ed.2d 1090.

In the two cases at hand, I think both factors are satisfied. It is surely indisputable that a State has the right to choose its teachers on the basis of fitness. And I think it equally clear, as the Court appears to recognize, that information about a teacher's associations may be useful to school authorities in determining the moral, professional, and social qualifications of the teacher, as well as in determining the type of service for which he will be best suited in the educational system. See Adler v. Board of Education, [1952] USSC 26; 342 U.S. 485, 72 S.Ct. 380, 96 L.Ed. 517; Beilan v. Board of Public Education, [1958] USSC 161; 357 U.S. 399, 78 S.Ct. 1317, 2 L.Ed.2d 1414; see also Slochower v. Board of Higher Education, [1956] USSC 42; 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692. Furthermore, I take the Court to acknowledge that, agreeably to our previous decisions, the State may enquire into associations to the extent that the resulting information may be in aid of that legitimate purpose. These cases therefore do not present a situation such as we had in N.A.A.C.P. v. Alabama, [1958] USSC 150; 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488, and Bates v. Little Rock, [1960] USSC 19; 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480, where the required disclosure bears no substantial relevance to a legitimate state interest.

Despite these considerations this statute is stricken down because, in the Court's view, it is too broad, because it asks more than may be necessary to effectuate the State's legitimate interest. Such a statute, it is said, cannot justify the inhibition on freedom of association which so blanket an inquiry may entail. Cf. N.A.A.C.P. v. Alabama, supra; Bates v. Little Rock, supra.

I am unable to subscribe to this view because I believe it impossible to determine a priori the place where the line should be drawn between what would be permissible inquiry and over broad inquiry in a situation like this. Certainly the Court does not point that place out. There can be little doubt that much of the associational information called for by the statute will be of little or no use whatever to the school authorities, but I do not understand how those authorities can be expected to fix in advance the terms of their enquiry so that it will yield only relevant information.

I do not mean to say that alternatives such as an inquiry limited to the names of organizations of whose character the State is presently aware, or to a class of organizations defined by their purposes, would not be more consonant with a decent respect for the privacy of the teacher, nor that such alternatives would be utterly unworkable. I do see, however, that these alternatives suffer from deficiencies so obvious where a State is bent upon discovering everything which would be relevant to its proper purposes, that I cannot say that it must, as a matter of constitutional compulsion, adopt some such means instead of those which have been chosen here.

Finally, I need hardly say that if it turns out that this statute is abused, either by an unwarranted publicizing of the required associational disclosures or otherwise, we would have a different kind of case than those presently before us. See Lassiter v. Northampton Elections Board, [1959] USSC 95;

360 U.S. 45, 53—54[1959] USSC 95; , 79 S.Ct. 985, 991[1959] USSC 95; , 3 L.Ed.2d 1072. All that is now here is the validity of the statute on its face, and I am unable to agree that in this posture of things the enactment can be said to be unconstitutional.

I would affirm in both cases.