

Washington University Law Review

Volume 28 | Issue 4

January 1943

Constitutional Law—Attachment to the Constitution—Revocation of Citizenship

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Recommended Citation

Constitutional Law—Attachment to the Constitution—Revocation of Citizenship, 28 WASH. U. L. Q. 275 (1943).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol28/iss4/5

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COMMENT ON RECENT DECISIONS

CONSTITUTIONAL LAW—ATTACHMENT TO THE CONSTITUTION—REVOCA-
 OF CITIZENSHIP—[Federal].—Petitioner, a Russian immigrant, was ad-
 mitted to United States citizenship in 1927 by a proper court upon satis-
 factory evidence that he had complied with United States naturalization
 requirements. In 1939, pursuant to statute,¹ a proceeding was begun by
 the United States government to set aside Petitioner's citizenship on the
 ground that it had been illegally procured in that Petitioner was not at
 the time of his naturalization, and during the statutory period preceding it,
 attached to the principles of the United States Constitution, but had been
 a member of certain Communist organizations and had subscribed to and
 promulgated their doctrines.² The United States Circuit Court of Appeals
 affirmed a decree issued by a United States District Court cancelling
 Petitioner's certificate of citizenship. The Supreme Court granted certiorari.
Held, that the judgment of the Courts below must be reversed. Petitioner's
 membership and activity in the Communist party at the time of his natural-
 ization, and during the statutory period preceding, was not incompatible
 with his attachment to the Constitution, and support of its principles.
Schneiderman v. United States.³

The granting of citizenship to a petitioning alien is a privilege con-
 ferred upon him by the United States government, and subject to whatever
 conditions Congress may impose.⁴ A primary condition is that the petitioner
 during the statutory residence period must have behaved as a person of
 good moral character, attached to the principles of the United States Con-
 stitution, and well disposed to the good order and happiness of the United
 States.⁵ It follows that a subsequent finding that this condition was not
 fulfilled may constitute such illegality as will warrant cancellation of his
 certificate of citizenship.⁶

Whether Petitioner's mere membership and activity in Communist organ-
 izations, as bearing upon his belief and conduct during the probative

1. Nationality Code (1906) 34 Stat. 601, 8 U. S. C. A. sec. 405.

2. During the five years preceding his naturalization, Petitioner was a
 member of the Young Workers (Communist) League in Los Angeles. In
 1925, he became a member of the Workers Party, the predecessor of the
 Communist Party in the United States. While the original complaint
 charged fraudulent procurement on the ground that Petitioner concealed
 his Communist affiliations from the naturalizing court, the present action
 was pressed on the ground of illegal procurement.

3. (1943) 63 S. Ct. 1333, 87 L. ed. 1249 (Justices Douglas and Rutledge
 concurring; Chief Justice Stone, and Justice Roberts and Frankfurter dis-
 senting. Justice Jackson did not participate in the decision.)

4. *United States v. Macintosh* (1931) 283 U. S. 605; *Tutun v. United
 States* (1926) 270 U. S. 568; *United States v. Williams* (1904) 194 U. S.
 279.

5. (1906) 34 Stat. 598.

6. When prescribed qualifications have no existence in fact, cancella-
 tion is warranted on the basis of illegal procurement. *Tutun v. United
 States* (1926) 270 U. S. 568.

statutory period, alone constituted such illegality, was the question posed in the present case, and one novel to the Supreme Court. Other federal courts, in deciding the few cases that have arisen presenting a substantially similar issue, have found adherence to Communist doctrine incompatible with attachment to the Constitution.⁷ The most recent of these cases was *United States v. Tapolcsanyi*.⁸ In that case, the defendant, in the year following his naturalization, wrote to his brother in Hungary that "he had been for the past eight years a pure, red Communist" and did not believe in representative government. The Court found that such beliefs, entertained during the statutory period before his petition for citizenship, were incompatible with attachment to the principles of the Constitution; that defendant had fraudulently acquired his certificate by falsely alleging attachment to the Constitution.

Against this background, the holding in the present case stands in sharp contrast; but it would be error to assume that the ruling is authority for the proposition that adherence to Communist doctrine presents no conflict with attachment to the Constitution. The Court did not attempt, either expressly or by implication, to project its ruling beyond the particular facts of the case. It was concerned solely with determining the actual political philosophy held by Petitioner, rather than that which might be imputed to him from his Communist membership. It is this careful distinction which gives strength to the Court's decision.

Petitioner's life and conduct was subjected to the closest scrutiny. He was found to be law-abiding; his record was unmarred by previous arrests; and at no time was he known either by an oral statement or a statement in writing to have advocated the forcible overthrow of our government. Impressed by Petitioner's deportment during the statutory period, one is respectful toward the suggestion made by the Court that the statutory criterion laid down by Congress is not attachment to the Constitution, in the subjective sense of a test of belief, but *behavior* for the statutory period as a man attached to the principles of the Constitution,⁹ an objective requirement which Petitioner clearly satisfied.

7. The Communist Party in the United States did not come into existence until 1921 (then called the Workers Party). But in *United States v. Olsson* (1912) 196 Fed. 562, concealment from the naturalization court of socialist belief was found to justify cancellation of citizenship. The basis of denaturalization in *United States v. Swelgin* (1918) 254 Fed. 884 was defendant's admission of adherence to the principles of the I. W. W.

8. (C. C. A. 3, 1930) 40 F. (2d) 255.

9. (1906) 34 Stat. 598 provides, "It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least . . . and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." The court concedes, however, that *United States v. Schwimmer* (1929) 279 U. S. 644 and *United States v. Macintosh* (1931) 283 U. S. 605, have held that the statute imports that an applicant for citizenship under the Act of 1906 "must not only behave as a man attached to the principles of the Constitution, but must be attached in fact at the time of naturalization." Nevertheless, emphasis is placed upon the

Accepting for purpose of argument, that an applicant under the 1906 Act must not only behave as a man attached to the Constitution, but must be so attached in fact, the Court sought to reconcile the fact of Petitioner's Communistic affiliations at the time of his naturalization with the required attachment to Constitutional principles. Illustrative of the Court's endeavor is the harmonizing of the absolutism, commonly associated with Communism, with our Constitutional mandate of representative government. Reconciliation is made on the ground that the "dictatorship of the proletariat" meant to Petitioner "not a government, but a state of things" in which "the majority of the people shall readily direct their own destinies and use the instrument of the State for these truly democratic ends." The Court concludes that Petitioner's testimonial of belief was not so incompatible with the philosophy of the Constitution as to warrant a "clear, unequivocal and convincing finding"¹⁰ that the naturalization court could not have been satisfied that the petitioner was attached to the principles of the Constitution when he was naturalized.

During the District Court's hearing,¹¹ testimony was given that the Communist Party, during the probative period of Petitioner's behavior, had as an ultimate aim the overthrow of the capitalistic government in the United States, the barring from franchise of certain minority groups, and the abolition of the Supreme Court itself. There was evidence presented which flatly repudiated these charges as false, and branded others as distortions of the Party's program. Whether, upon an evaluation of all the evidence, the finding could be justified that, during the probative period of Petitioner's behavior, certain principles were so inalienably associated with the Communist organizations to which Petitioner belonged, and were so irreconcilably in conflict with American constitutional principles, that Petitioner could not be legally heard to disassociate himself from them by his own construction of their significance, would appear to be an issue on which reasonable men might well differ. The Court selected that of two possibilities which it believed comported most strongly with the "spirit of freedom and tolerance in which our nation was founded," and refused to impute to Petitioner any reprehensible interpretation of any organization and its program which were not personally his.

A. L. B., JR.

statement of the late Chief Justice Hughes in his dissent in the *Macintosh* case that the behavior requirement should be construed in accord with the theory of our government in relation to freedom of conscience.

10. In a denaturalization proceeding, it is a judgment which is subject to attack, and the government must prove lack of attachment by evidence which does not leave the issue in doubt. *United States v. Rovin* (D. C. E. D. Mich., 1926) 12 F. (2d) 942; *United States v. Der Manelian* (D. C. D. R. I. 1941) 39 Fed. Supp. 959.

11. The government called as witnesses a former member of the Communist Party, and a police officer at one time in charge of the Los Angeles radical squad, as well as the Petitioner, and introduced in evidence numerous documents and papers, purporting to be expositions of Communist doctrine. The Petitioner testified in his own behalf, presented transcripts of testimony of two University professors given at another proceeding, and introduced in evidence other documents and papers purporting to be declarative of Communist doctrine and principles.