

The Burger Court Opinion Writing Database

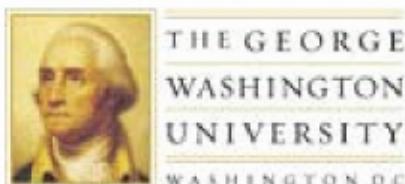
In the Matter of Stolar

401 U.S. 23 (February 23, 1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 8, 1971

Re: No. 18 - In the Matter of Stolar

Dear Harry:

Please join me in your dissent in the above.

Regards,

WEB

Mr. Justice Blackmun

cc: The Conference

Black

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Black, J.

1

Circulated: NOV 5 1970

SUPREME COURT OF THE UNITED STATES
Recirculated:

No. 18.—OCTOBER TERM, 1970

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[November —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

This is the second of two cases* involving the refusal of States to admit applicants to practice law because they declined to answer questions relating to their beliefs about government and their affiliations with organizations suspected of advocating the overthrow of government by force. These cases, which concern inquisitions about loyalty and government overthrow, are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin. We have just referred in our opinion in *Sara Baird v. State of Arizona* to the confusion and uncertainty created by past cases in this constitutional field. The central question in all of them has been the same, whether involving lawyers, doctors, marine workers, or State and Federal Government employees: namely, to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct. Without attempting in that case to bring a complete reconciliation of all that this Court has previously said about this particular phase of First Amendment

*The other is No. 15, *Sara Baird v. State Bar of Arizona*, *supra*. Cf. No. 49, *Law Students Civil Rights Research Council, Inc. v. Wadmond*.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Clark
Mr. Justice Marshall
Mr. Justice Black

Unnumbered throughout

2

SUPREME COURT OF THE UNITED STATES

No. 18.—OCTOBER TERM, 1970

DEC. 3 1970

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[December —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

This is the second of two cases* involving the refusal of States to admit applicants to practice law because they declined to answer questions relating to their beliefs about government and their affiliations with organizations suspected of advocating the overthrow of government by force. These cases, which concern inquisitions about loyalty and government overthrow, are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin. We have just referred in our opinion in *Sara Baird v. State Bar of Arizona* to the confusion and uncertainty created by past cases in this constitutional field. The central question in all of them has been the same, whether involving lawyers, doctors, marine workers, or State and Federal Government employees: namely, to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct. Without attempting in that case to bring a complete reconciliation of all that this Court has previously said about this particular phase of First Amendment

*The other is No. 15, *Sara Baird v. State Bar of Arizona*, *supra*. Cf. No. 49, *Law Students Civil Rights Research Council, Inc. v. Wadmond*.

*Styloster
Changer*

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

RECEIVED
FEB 20 1971

No. 18.—OCTOBER TERM, 1970

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[February —, 1971]

MR. JUSTICE BLACK announced the judgment of the Court and delivered an opinion in which MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join.

This is the second of two cases* involving the refusal of States to admit applicants to practice law because they declined to answer questions relating to their beliefs about government and their affiliations with organizations suspected of advocating the overthrow of government by force. These cases, which concern inquisitions about loyalty and government overthrow, are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin. We have just referred in our opinion in *Sara Baird v. State Bar of Arizona* to the confusion and uncertainty created by past cases in this constitutional field. The central question in all of them has been the same, whether involving lawyers, doctors, marine workers, or State and Federal Government employees: namely, to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct. Without attempting in that case to bring about a com-

*The other is No. 15, *Sara Baird v. State Bar of Arizona*, *supra*. Cf. No. 49, *Law Students Civil Rights Research Council, Inc. v. Wadmond*.

WB
1
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Black, J.

Circulated: NOV 5 1970

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 18.—OCTOBER TERM, 1970

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[November —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

This is the second of two cases* involving the refusal of States to admit applicants to practice law because they declined to answer questions relating to their beliefs about government and their affiliations with organizations suspected of advocating the overthrow of government by force. These cases, which concern inquisitions about loyalty and government overthrow, are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin. We have just referred in our opinion in *Sara Baird v. State of Arizona* to the confusion and uncertainty created by past cases in this constitutional field. The central question in all of them has been the same, whether involving lawyers, doctors, marine workers, or State and Federal Government employees: namely, to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct. Without attempting in that case to bring a complete reconciliation of all that this Court has previously said about this particular phase of First Amendment

*The other is No. 15, *Sara Baird v. State Bar of Arizona*, *supra*. Cf. No. 49, *Law Students Civil Rights Research Council, Inc. v. Wadmond*.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 23, 1970

Dear Hugo:

I am sorry I missed you today when
I called about No. 18 -- In Re Stolar,
in which Justice Stewart has written.

When you get around to it would you
let me know what your decision in the
matter is? I have not returned to
Stewart and do not plan to do so until
I know what you are going to do.

W.W.
William O. Douglas

Mr. Justice Black

February 3, 1971

Re: No. 18 - In the Matter of Stolar

Dear Harry:

Please join me in your absence

Sincerely,

J. M. H.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1970

RE: No. 18 - In the Matter of the Application
of Martin Robert Stolar

Dear Hugo:

I agree with your opinion in the above
case.

Sincerely,


W. J. B. Jr.

Mr. Justice Black

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: NOV 24 1970

No. 18.—OCTOBER TERM, 1970

Recirculated: _____

In the Matter of the Application of Martin Robert Stolar. } On Writ of Certiorari to the Supreme Court of Ohio.

[December —, 1970]

MR. JUSTICE STEWART, concurring.

Ohio's questions 7 and 13 are plainly unconstitutional under *Shelton v. Tucker*, 364 U. S. 479. In addition, question 12 (g) suffers from the same constitutional deficiency as does Arizona's question 27 in *Baird v. State Bar of Arizona*, *ante*. For these reasons I agree that the judgment before us must be reversed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1970

Re: No. 18 - In the Matter of the Application
of Martin Robert Stolar

Dear Hugo:

Please join me.

Sincerely,



T.M.

Mr. Justice Black

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: 2/1/71

No. 18.—OCTOBER TERM, 1970

Recirculated:

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[February —, 1971]

MR. JUSTICE BLACKMUN, dissenting.

This case, also argued here for the second time, presents another instance of a well-educated (academic degree from the University of Rochester; law degree from New York University) and obviously able young person who seeks admission to the Bar, but, to an extent at least, upon his own terms. His case is made the more acute and appealing because he already has been admitted to practice in the State of New York but now finds himself thwarted in a like endeavor in Ohio. The decisions in *Konigsberg v. State Bar of California*, 366 U. S. 36 (1961), and *In re Anastaplo*, 366 U. S. 82 (1961), are again challenged.

The Court in its opinion has set forth the pertinent questions asked of Martin Robert Stolar, when he sought admission to the New York Bar in 1968, and Stolar's answers to those questions. At that time he was willing to go so far as specifically to profess even his *belief* in the principles underlying the form of government of the United States and his loyalty to that government, and also, just as specifically, to go so far as to deny that he was, or ever had been, a member of any party or organization pledged to effect changes in the form of our government or engaged in advancing the interest of a foreign country. The propriety of these very questions, which Stolar answered apparently without hesitation in New York in 1968, was seriously questioned subsequently

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 18.—OCTOBER TERM, 1970

Circulated:

Recirculated: 2/9/71

In the Matter of the Application of Martin Robert Stolar. On Writ of Certiorari to the Supreme Court of Ohio.

[February —, 1971]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE, MR. JUSTICE HARLAN, and MR. JUSTICE WHITE join, dissenting.

This case, also argued here for the second time, presents another instance of a well-educated (academic degree from the University of Rochester; law degree from New York University) and obviously able young person who seeks admission to the Bar, but, to an extent at least, upon his own terms. His case is made the more acute and appealing because he already has been admitted to practice in the State of New York but now finds himself thwarted in a like endeavor in Ohio. The decisions in *Konigsberg v. State Bar of California*, 366 U. S. 36 (1961), and *In re Anastaplo*, 366 U. S. 82 (1961), are again challenged.

The Court in its opinion has set forth the pertinent questions asked of Martin Robert Stolar, when he sought admission to the New York Bar in 1968, and Stolar's answers to those questions. At that time he was willing to go so far as specifically to profess even his *belief* in the principles underlying the form of government of the United States and his loyalty to that government, and also, just as specifically, to go so far as to deny that he was, or ever had been, a member of any party or organization pledged to effect changes in the form of our government or engaged in advancing the interest of a foreign country. The propriety of these very questions,