

formerly the Civil Service Commission, the Act prevents employees from running for public office, distributing campaign literature, playing an active role at political meetings, circulating nomination petitions, attending a political convention except as a spectator, publishing a letter soliciting votes for a candidate, and all similar activity.⁷⁶⁵ The question is whether government, which may not prohibit citizens in general from engaging in these activities, may nonetheless so control the off-duty activities of its own employees.

In *United Public Workers v. Mitchell*,⁷⁶⁶ the Court answered in the affirmative. While the Court refused to consider the claims of persons who had not yet engaged in forbidden political activities, it ruled against a mechanical employee of the Mint who had done so. The Court's opinion, by Justice Reed, recognized that the restrictions of political activities imposed by the Act did in some measure impair First Amendment and other constitutional rights,⁷⁶⁷ but it based its decision upon the established principle that no right is absolute. The standard by which the Court judged the validity of the permissible impairment of First Amendment rights was a due process standard of reasonableness.⁷⁶⁸ Thus, changes in the standards of judging incidental restrictions on expression suggested the possibility of a reconsideration of *Mitchell*.⁷⁶⁹ In *Civil Service Commission v. National Association of Letter Carriers*, however, a divided Court, reaffirming *Mitchell*, sustained the Act's limitations upon political activity against a range of First Amendment challenges.⁷⁷⁰ The Court emphasized that the interest of the government in forbidding partisan political activities by its employees was so substantial that it overrode the rights of those employees to engage in political activities and association;⁷⁷¹ therefore, a statute that barred

⁷⁶⁵ The Commission on Political Activity of Government Personnel, Findings and Recommendations 11, 19–24 (Washington: 1968).

⁷⁶⁶ 330 U.S. 75, 94–104 (1947). The decision was 4-to-3, with Justice Frankfurter joining the Court on the merits only after arguing that the Court lacked jurisdiction.

⁷⁶⁷ 330 U.S. at 94–95.

⁷⁶⁸ 330 U.S. at 101–02.

⁷⁶⁹ The Act was held unconstitutional by a divided three-judge district court. *National Ass'n of Letter Carriers v. Civil Service Comm'n*, 346 F. Supp. 578 (D.D.C. 1972).

⁷⁷⁰ 413 U.S. 548 (1973). In *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), the Court refused to consider overbreadth attacks on a state statute of much greater coverage because the plaintiffs had engaged in conduct that the statute clearly could constitutionally proscribe.

⁷⁷¹ The interests the Court recognized as served by the proscription on partisan activities were (1) the interest in the efficient and fair operation of governmental activities and the appearance of such operation, (2) the interest in fair elections, and (3) the interest in protecting employees from improper political influences. 413 U.S. at 557–67.