thereafter applying the distinction itself. Upholding a prohibition on employing as teachers anyone who advocated overthrowing the government, the Court declared that "[i]t is clear that such persons have the right under our law to assemble, speak, think and believe as they will. . . . It is equally clear that they have no right to work for the state in the school system on their own terms. They may work for the school system under reasonable terms laid down by the proper authorities of New York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech or assembly? We think not." [783]

The same year, however, in *Wieman v. Updegraff*, the Court expressly questioned the "right-privilege" doctrine, and has subsequently gone on to eliminate the distinction altogether. In *Wieman*, the Court voided a public employee loyalty oath requirement conditioned on mere membership in suspect organizations, reasoning that the interest of public employees in being free of such an imposition was substantial. "There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. . . . [W]e need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." [784]

The premise here—that there is a constitutional claim against dismissal or rejection—has faded in subsequent cases. The rationale now is that, although government may deny employment for any number of reasons (or any benefit for that matter), it may not deny employment or other benefits on a basis that infringes a per-

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prohibition against the dismissal of Government employees because of their political beliefs, activities or affiliations. . . . The First Amendment guarantees free speech and assembly, but it does not guarantee Government employ." Id. at 59. Although the Supreme Court issued no opinion in *Bailey*, several Justices touched on the issues in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951). Justices Douglas and Jackson in separate opinions rejected the privilege doctrine as applied by the lower court in *Bailey*. Id. at 180, 185. Justice Black had previously rejected the doctrine in United Public Workers v. Mitchell, 330 U.S. 75, 105 (1947) (dissenting opinion).

[783] Adler v. Board of Education, 342 U.S. 458, 492–93 (1952). Justices Douglas and Black dissented, again rejecting the privilege doctrine. Id. at 508. Justice Frankfurter, who dissented on other grounds, had previously rejected the doctrine in another case, Garner v. Board of Public Works, 341 U.S. 716, 725 (1951) (concurring in part and dissenting in part).

[784] *344 U.S. 183, 190–91, 192 (1952)*. Some earlier cases had used a somewhat qualified statement of the privilege. United Public Workers v. Mitchell, 330 U.S. 75, 100 (1947); Garner v. Board of Public Works, 341 U.S. 716, 722 (1951).