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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2007-2008

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R.W. Cole et al.

v.

Bob Riley, Governor of the State of Alabama, et al.

Appeal from Montgomery Circuit Court
(CV-05-1244)

On Application for Rehearing

COBB, Chief Justice.

APPLICATION OVERRULED.

See, Lyons, Woodall, and Smith, JJ., concur.

Stuart, Bolin, Parker, and Murdock, JJ., dissent.

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PARKER, Justice (dissenting).

Language is not merely mechanical names for objects and actions. Language is a way of thinking, feeling, and expressing. When one translates a passage from one language to another, it is often difficult and sometimes impossible to capture the full force or meaning of the original passage. People may become fluent in a second language, but they are moved in a special way when they hear a song or passage of literature in the language of their childhood.

The United States Supreme Court recognized the importance of language in Meyer v. Nebraska, 262 U.S. 390 (1923). In 1919, the Nebraska Legislature enacted a statute that forbade teaching children in any language except English in any private, denominational, parochial, or public school, until a child had completed the eighth grade. The Nebraska Supreme Court upheld the law as constitutional. Meyer v. State, 107 Neb. 657, 187 N.W. 100 (1922). The United States Supreme Court reversed the judgment of the Nebraska Supreme Court, but it recognized the important public policy that the new law served. The United States Supreme Court quoted from the opinion of the Nebraska Supreme Court:

"The salutary purpose of the statute is clear. The Legislature had seen the baneful effects of permitting foreigners, who had taken residence in this country, to rear and educate their children in the language of their native land. The result of that condition was found to be inimical to our own safety. To allow the children of foreigners, who had emigrated here, to be taught from early childhood the language of the country of their parents was to rear them with that language as their mother tongue. It was to educate them so that they must always think in that language, and, as a consequence, naturally inculcate in them the ideas and sentiments foreign to the best interests of this country. The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language and until it had become a part of them, they should not in the schools be taught any other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state. The enactment of such a statute comes reasonably within the police power of the state. Pohl v. State, 102 Ohio St. 474, 132 N.E. 20 [(1921)]; State v. Bartels, 191 Iowa 1060, 181 N.W. 508 [(1921)]."

The United States Supreme Court reversed the judgment of the Nebraska Supreme Court and held the statute unconstitutional as applied to parents who sent their children to a Lutheran school at which they learned the German language. But the Court recognized the public policy the statute served:

"The desire of the Legislature to foster a homogeneous people with American ideals prepared

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readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every character of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to the plaintiff in error."

Meyer, 262 U.S. at 402. The Court also stated: "Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution -- a desirable end cannot be promoted by prohibited means." 262 U.S. at 401.

I completely agree with the United States Supreme Court that the Nebraska statute interfered with the right of parents to control the education of their children. But I also agree that it would be "highly advantageous" if our entire population understood the English language as the common tongue.

Unlike the Nebraska statute, Amendment No. 509 to the Alabama Constitution (now codified as § 36.01, Ala. Const. 1901 (Off. Recomp.)), as the plaintiffs construe it, conflicts with no constitutional right. It does not prohibit anyone from learning a foreign language or teaching a foreign language to his or her children. It does not prohibit anyone

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from speaking a foreign language, in private or in public. As construed by the plaintiffs, it requires only that driver's license examinations be administered solely in English. Nowhere in their pleadings do the defendants allege that the plaintiffs' construction of Amendment No. 509 conflicts with any federal or state constitutional right.

John Jay, later to become the first Chief Justice of the United States Supreme Court, wrote in Federalist No. 2:

"Providence has been pleased to give this one connected country to one united people -- a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence."

The Federalist No. 2, at 7 (John Jay) (Bicentennial ed. 1987).

I am emphatically not opposed to learning foreign languages. Thanks to a Rotary International Fellowship, I was the first foreign student admitted to the University of Sao Paulo School of Law, in Sao Paulo, Brazil. I did not expect my professors and fellow students to learn English in order to communicate with me; I became fluent in Portuguese so I could

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communicate with them. And I was greatly enriched by the experience.

America itself has been enriched by those who have come from other countries. However, a common language not only facilitates clear and effective communication; it also helps to foster a common vision for the nation. I therefore stand by my dissenting vote on original submission in this case.