

IN AN OPINION that is all the more reassuring because Chief Justice Burger joined in it, the U.S. Supreme Court has held that public employees may not be discharged solely because of their political beliefs.

The court said in *Branti v. Finkel* that it was sufficient for the employ-

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ees to prove they were about to be dismissed solely for the reason that they were "not affiliated with or sponsored by" the political party in power.

The test of party affiliation has caused an endless waste of time and the loss of good workers in lower-level jobs which should not even be part of a sophisticated spoils system. Still, when employees are in a position to make policy it is important that they subscribe to the philosophy and objectives of the party that wins the election. The *Branti* decision makes this distinction clear.

Speaking through Justice Stevens, who wrote the opinion, the court said, "the issue is not whether the label 'policy maker' or 'confidential' fits the particular office in question, but rather whether the hiring authority can demonstrate that the party affil-

iation is an appropriate requirement for the effective performance of the office."

The employees who brought the case to court were two Republicans serving as assistant public defenders in Rockland county, New York. Although it was admitted that they were competent, the Democratic public defender sought to dismiss them from his staff.

Over the years a number of cases of this kind has come to my attention, but two stand out as examples of how frivolous and harmful the exercise of appointment based on patronage can be to worthwhile programs.

When President Roosevelt set up the Fair Employment Practice Committee, it was not easy to get capable people to serve as regional directors or to head local offices. There were many other jobs that paid more and had fewer headaches.

A talented Republican was selected to be director of the FEPC's regional office in Philadelphia. At that time the political bosses wanted all jobs to be held by those of proven

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party loyalty and they demanded that he be replaced. One classic utterance of those who were trying to get him dismissed was: "He didn't even have the decency to change his registration when he got the job."

This remark echoed in my memory when I noted that one of the Republican plaintiffs in the *Branti* case had changed his registration to Democrat, apparently, as the District court observed, with the hope that "such action would enhance his chances of being reappointed as an assistant when a new Democratic public defender was appointed."

When the Eisenhower administration took office, job-hungry Republicans made a list of all black jobholders who were not protected by civil service classification and sought to replace them with GOP faithfuls. Some prominent black housing officials were prime targets and beneficial programs they were administering for minorities were thrown into a state of confusion.

The "dissenting opinion in the *Branti* case, written by Justice Powell and joined in by Justices Rehn-

quist and Stewart, seems to be unduly fearful that the decision "continues the evisceration of the patronage practices . . . with scarcely a glance at almost 200 years of American political tradition."

Apparently, the minority overlooked the fact that the public defender in Rockland county could have dismissed the employees for proper reasons that were not based on political affiliation or beliefs. The *Branti* decision does not change that.

No thinking person would want to see such restraints imposed that would force officials to retain party hacks or subordinates who seek to undermine programs and policies for unfair partisan reasons. It does not appear that the majority opinion would prevent clean-ups and dismissals that are needed to prevent sabotage or neglect of objectives that elected officials want to accomplish.

All too frequently, government officials forget that election or appointment does not give them *carte blanche* to make capricious firings of efficient employees. In addition to putting a brake on that kind of conduct, the majority opinion supports the principle that the public interest and not mere party loyalty or affiliation should be paramount as a qualification for holding a public service job.