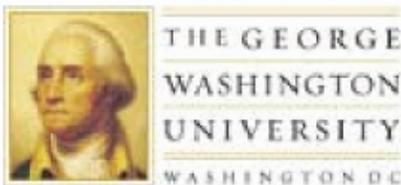


The Burger Court Opinion Writing Database

Carter v. Jury Commission of Greene County

396 U.S. 320 (1970)

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

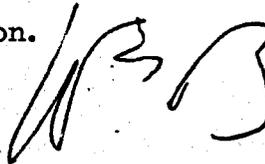
January 7, 1970

7-30

Re: Carter v. Jury Commission of Greene County

Dear Potter:

I join in your opinion.



W.E.B.

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

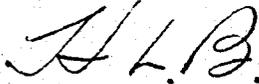
January 15, 1970

Dear Potter:

Re: No. 30- Willie Carter, et al. v. Jury
Commission of Greene County, et al.

With the exception of the point noted in my
brief concurrence, which I am circulating here-
with, I agree with the opinion you have written
for the Court in this case.

Sincerely yours,



H. L. B.

Mr. Justice Stewart

cc: Members of the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 30.—OCTOBER TERM, 1969

Circulated: 1-15-70

Willie Carter et al., Appellants,
v.
Jury Commission of Greene
County et al. } On Appeal from the
United States Dis-
trict Court for the
Northern District of
Alabama.

[January —, 1970]

MR. JUSTICE BLACK, concurring.

I concur in the opinion of the Court except insofar as it may leave an implication that this Court has the power to vacate a state governor's appointment of jury commissioners or the power to compel the governor of a State to appoint Negroes or any other persons to the office of jury commissioner. The Constitution no more grants this Court the power to compel a governor to appoint or reject a certain individual or a member of particular minority group than it grants this Court the power to compel the voters of a State to elect or defeat a particular person or a member of a particular minority group.

To: The Chief Justice
Mr. Justice Douglas
✓
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Souter
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Kagan
Mr. Justice Sotomayor
Mr. Justice Alito
Mr. Justice Thomas
Mr. Justice Kennedy
Mr. Justice Scalia
Mr. Justice Roberts
Mr. Justice Chief Justice
1-15-70

SUPREME COURT OF THE UNITED STATES

No. 30.—OCTOBER TERM, 1969

Willie Carter et al., Appellants,
v.
Jury Commission of Greene
County et al. } On Appeal from the
United States Dis-
trict Court for the
Northern District of
Alabama.

[January —, 1970]

MR. JUSTICE BLACK, concurring.

I concur in the judgment and opinion of the Court except insofar as it may leave an implication that this Court has the power to vacate a state governor's appointment of jury commissioners or the power to compel the governor of a State to appoint Negroes or any other persons to the office of jury commissioner. In my judgment the Constitution no more grants this Court the power to compel a governor to appoint or reject a certain individual or a member of any particular group than it grants this Court the power to compel the voters of a State to elect or defeat a particular person or a member of a particular group.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 10, 1970

Dear Potter:

In No. 30 - Carter v. Jury
Commission, while I agree with most of
the opinion, I am going to write a
partial dissent.

W. O. D.

Mr. Justice Stewart

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

SUPREME COURT OF THE UNITED STATES ^{From Douglas, J.}

Circulated: 1/10/70
No. 30.—OCTOBER TERM, 1969
Received

Willie Carter et al., Appellants, }
v. } On Appeal from the
Jury Commission of Greene } United States Dis-
County et al. } trict Court for the
Northern District of
Alabama.

[January —, 1970]

MR. JUSTICE DOUGLAS, dissenting in part.

There comes a time when an organ or agency of state law has proved itself to have such a racist mission that it should not survive constitutional challenge. The instances are not numerous in our history. But they have appeared. One was present in *Louisiana v. United States*, 380 U. S. 145, where a state constitution required every voter who applied to register to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar." *Id.*, p. 149. This interpretation test had had a history of depriving "otherwise qualified Negro citizens of their right to vote," *id.*, p. 150, and was deemed incapable of fair application through policing by injunction. *Id.*, p. 150, n. 9. We therefore struck it down.

The District Court in the instant case held that the attack "on racial composition of the [jury] commission fails for want of proof. No proof was adduced except that the Commission of Greene County now is and for many years has been composed entirely of white men appointed by the Governor." — F. Supp. —. But, as the opinion of the Court states, the record shows much more: it demonstrates a systematic exclusion of Negroes



January 14, 1970

MEMORANDUM FOR THE CONFERENCE:

Due to an oversight, my dissenting opinion in No. 30 - Garter v. Jury Commission, was circulated.

It is not a finished opinion - it is merely the first draft, and hopefully over the next week I will get around a second revision.

Meanwhile, I am sending this note to you with the original with this dissenting opinion.

Very truly,
[Signature]

W. J. Brennan
Justice of the Supreme Court
Washington, D.C.

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

SUPREME COURT OF THE UNITED STATES

No. 30.—OCTOBER TERM, 1969

Mr. Douglas, J.
1/15/70

Willie Carter et al., Appellants,
v.
Jury Commission of Greene
County et al. } On Appeal from the
United States Dis-
trict Court for the
Northern District of
Alabama.

[January —, 1970]

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Minor changes

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

SUPREME COURT OF THE UNITED STATES

No. 30.—OCTOBER TERM, 1969

From: District Court

Circuit Court

Willie Carter et al., Appellants,
v.
Jury Commission of Greene
County et al. } On Appeal from the
United States Dis-
trict Court for the
Northern District of
Alabama.

1-16

[January 19, 1970]

MR. JUSTICE DOUGLAS, dissenting in part.

There comes a time when an organ or agency of state law has proved itself to have such a racist mission that it should not survive constitutional challenge. The instances are not numerous in our history. But they have appeared. One was present in *Louisiana v. United States*, 380 U. S. 145, where a state constitution required every voter who applied to register to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar." *Id.*, at 149. This interpretation test had had a history of depriving "otherwise qualified Negro citizens of their right to vote," *id.*, at 150, and was deemed incapable of fair application through policing by injunction. *Id.*, at 150, n. 9. We therefore struck it down.

The District Court in the instant case held that "[t]he attack on racial composition of the [jury] commission fails for want of proof. No proof was adduced except that the commission in Greene County now is and for many years has been composed entirely of white men appointed by the governor." 298 F. Supp. 181, 192. But, as the opinion of the Court states, the record shows much more: it demonstrates a systematic exclusion of Negroes from juries in Greene County even though the

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice
Mr. Justice
Mr. Justice

3, 4, 5

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 30.—OCTOBER TERM, 1969

Circulated: _____

Willie Carter et al., Appellants,
v.
Jury Commission of Greene
County et al. } On Appeal from the
United States Dis-
trict Court for the
Northern District of
Alabama.

Circulated: 1-17

[January 19, 1970]

Mr. JUSTICE DOUGLAS, dissenting in part.

There comes a time when an organ or agency of state law has proved itself to have such a racist mission that it should not survive constitutional challenge. The instances are not numerous in our history. But they have appeared. One was present in *Louisiana v. United States*, 380 U. S. 145, where a state constitution required every voter who applied to register to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar." *Id.*, at 149. This interpretation test had had a history of depriving "otherwise qualified Negro citizens of their right to vote," *id.*, at 150, and was deemed incapable of fair application through policing by injunction. *Id.*, at 150, n. 9. We therefore struck it down.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

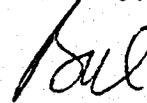
January 12, 1970

RE: No. 30 - Carter v. Jury Commission of
Greene County, et al.

Dear Potter:

I agree with your opinion in the above
case.

Sincerely,



W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

1/5/70
Ray

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: 1/5/70

No. 30.—OCTOBER TERM, 1969

Re-circulated: _____

Willie Carter et al., Appellants, } On Appeal from the
v. } United States Dis-
Jury Commission of Greene } trict Court for the
County et al. } Northern District of
Alabama.

[January —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The appellants, Negro citizens of Greene County, Alabama, commenced this class action against officials charged with the administration of the State's jury-selection laws: the county jury commissioners and their clerk, the local circuit court judge, and the Governor of Alabama. The complaint alleged that the appellants were fully qualified to serve as jurors and desired to serve, but had never been summoned for jury service. It charged that the appellees had effected a discriminatory exclusion of Negroes from grand and petit juries in Greene County—the Governor in his selection of the county jury commission, and the commissioners and judge in their arbitrary exclusion of Negroes. The complaint sought (1) a declaration that qualified Negroes were systematically excluded from Greene County grand and petit juries, that the Alabama statutes governing jury selection were unconstitutional on their face and as applied, and that the jury commission was a deliberately segregated governmental agency; (2) a permanent injunction forbidding the systematic exclusion of Negroes from Greene County juries pursuant to the challenged

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9.11.16

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

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 30.—OCTOBER TERM, 1969

Circulated: _____

Recirculated: **JAN 8**

Willie Carter et al., Appellants, }
v. } On Appeal from the
Jury Commission of Greene } United States Dis-
County et al. } trict Court for the
Northern District of
Alabama.

[January —, 1970]

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January 8, 1970

Re: No. 30 - Carter v. Jury Comm

Dear Potter:

Please join me.

Sincerely,

S.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1970

Re: No. 30 - Carter v. Jury Commission

Dear Potter:

Please join me.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference