The Burger Court Opinion Writing Database

Mitchell v. Donovan

398 U.S. 427 (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

June 2, 1970

Re: No. 726 - Mitchell v. Donovan

MEMORANDUM TO THE CONFERENCE:

In light of Justice Marshall's illness, Justice Stewart has agreed to write the opinion in the above case.

W. E. B.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1970

Re: No. 726 - Mitchel l v. Donovan

Dear Potter:

Please join me.

Regards,

WEB

Mr. Justice Stewart

cc: The Conference

June 4, 1970

Dear Potter:

In No. 726 - Mitchell v. Donovan, I am filing a concurring opinion which will be around soon. In light of what I say I hope you will be willing to delete your footnote reference to No. 7 - Gunn v. University Committee, which I have joined and which I think is technically not relevant to the opinions in No. 726.

W. O. D.

Mr. Justice Stewart

SUPREME COURT OF THE UNITED STATES

No. 726.—October Term, 1969

Charlene Mitchell et al., Appellants, *v.* Joseph L. Donovan, Etc., et al. | On Appeal from the United States District Court for the District of Minnesota.

[June —, 1970]

Mr. Justice Douglas, concurring.

I agree with the District Court that the case is too hypothetical to qualify as a "case" or "controversy" within the meaning of Article III. I do not, however, share the aversion to 28 U. S. C. § 1253 which the Court's opinion reflects. I would be hospitable to its aim and purpose as my dissent in *Swift & Co.* v. *Wickersham,* 382 U. S. 111, 129, indicates. The declaratory judgment is, I think, "an order granting or denying . . . an . . . inspection" within the meaning of § 1253.

Kennedy v. *Mendoza-Martinez,* 372 U. S. 144, 154, 155, is not to the contrary. It merely held that in some circumstances "an action solely for declaratory relief" could be tried before a single judge where the "relief sought and the order entered affected an Act of Congress in a totally non-coercive fashion." We indicated, however, that a different result would follow "whenever the operation of a statutory scheme may be immediately disrupted before a final judicial determination of the validity of the trial court's order can be obtained." *Id.,* 155.

The *Kennedy* case, in other words, involved solely the question whether a three-judge court need always be summoned where no injunction relief was asked or contemplated. The answer involved an analysis of 28

SUPREME COURT OF THE UNITED STATES

No. 726.—October Term, 1969

arlene Mitchell et al., Appellants, *v.* seph L. Donovan, Etc., et al.	On Appeal from the United States District Court for the District of Minnesota.

[June —, 1970]

Mr. Justice Douglas, dissenting.

I agree with the District Court that the case is too pothetical to qualify as a "case" or "controversy" thin the meaning of Article III and I would affirm. I not, however, share the aversion to 28 U. S. C. § 1253 ich the Court's opinion reflects. I would be hospitable its aim and purpose as my dissent in *Swift & Co.* v. *ickersham*, 382 U. S. 111, 129, indicates. The declaratory judgment is, I think, "an order granting or denying . . . an . . . inspection" within the meaning of § 1253. *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 154, 155, is not to the contrary. It merely held that in some umstances "an action solely for declaratory relief" uld be tried before a single judge where the "relief ught and the order entered affected an Act of Congress a totally non-coercive fashion." We indicated, however, that a different result would follow "whenever the eration of a statutory scheme may be immediately rupted before a final judicial determination of the idity of the trial court's order can be obtained." 155.

The *Kennedy* case, in other words, involved solely the estion whether a three-judge court need always be mmoned where no injunction relief was asked or contemplated. The answer involved an analysis of 28

SUPREME COURT OF THE UNITED STATES

Douglas, J.

No. 726.—October Term, 1969

Circulated: 6-8

Charlene Mitchell et al., Appellants, v. Joseph L. Donovan, Etc., et al. | On Appeal from the United States District Court for the District of Minnesota.

[June —, 1970]

Mr. Justice Douglas, dissenting.

I agree with the District Court that the case is too hypothetical to qualify as a "case" or "controversy" within the meaning of Article III and I would affirm. I do not, however, share the aversion to 28 U. S. C. § 1253 which the Court's opinion reflects. I would be hospitable to its aim and purpose as my dissent in *Swift & Co.* v. *Wickersham,* 382 U. S. 111, 129, indicates. The declaratory judgment is, I think, "an order granting or denying . . . an . . . injunction" within the meaning of § 1253.

Kennedy v. *Mendoza-Martinez,* 372 U. S. 144, 154, 155, is not to the contrary. It merely held that in some circumstances "an action solely for declaratory relief" could be tried before a single judge where the "relief sought and the order entered affected an Act of Congress in a totally non-coercive fashion." We indicated, however, that a different result would follow "whenever the operation of a statutory scheme may be immediately disrupted before a final judicial determination of the validity of the trial court's order can be obtained." *Id.,* 155.

The *Kennedy* case, in other words, involved solely the question whether a three-judge court need always be summoned where no injunction relief was asked or contemplated. The answer involved an analysis of 28

June 4, 1970

Re: No. 726 - Mitchell v. Donovan

Dear Potter:

I agree with the per curiam which you were good enough to undertake for the Court in Thurgood Marshall's absence.

Sincerely,

T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1970

RE: No. 726 - Mitchell v. Donovan

Dear Potter:

I agree with the Per Curiam you have prepared in this case.

Sincerely,

W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 726 - Mitchell v. Donovan

Thurgood Marshall was originally assigned the task of writing the opinion for the Court in this case. Because of Thurgood's illness, the Chief Justice asked me to take it over. I trust the attached Per Curiam adequately reflects the view expressed by the majority at our Conference. To give credit where it is due, I should add that the lion's share of the work on this was done in Thurgood's office.

P.S.

SUPREME COURT OF THE UNITED STATES

No. 726.—October Term, 1969

Charlene Mitchell et al., Appellants, *v.* Joseph L. Donovan, Etc., et al.	On Appeal from the United States District Court for the District of Minnesota.

[June —, 1970]

Per Curiam.

The appellants are the 1968 Communist Party candidates for President and Vice President of the United States, various Minnesota voters who alleged a desire to vote for these candidates, and the Communist Parties of the United States and of Minnesota. The appellant candidates obtained petitions containing the requisite number of names and asked the Secretary of State of Minnesota to place them on the ballot for the 1968 election. The Secretary denied the request, relying upon an opinion by the Attorney General of the State to the effect that placing Communist Party candidates on the ballot would violate the Federal Communist Control Act of 1954, 68 Stat. 775, 50 U. S. C. §§ 841–842, which declares that the Communist Party "should be outlawed," and purports to strip it of all "rights, privileges and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof . . . ."

The appellants brought an action in the United States District Court for the District of Minnesota seeking a declaration that the Communist Control Act was constitutionally invalid and praying for a temporary re-

Reference to was deleted.

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

3 , J.

SUPREME COURT OF THE UNITED STATES

Recirculated: JUN 12 1970

No. 726.—October Term, 1969

Charlene Mitchell et al., Appellants, *v.* Joseph L. Donovan, Etc., et al.	On Appeal from the United States District Court for the District of Minnesota.

[June —, 1970]

Per Curiam.

The appellants are the 1968 Communist Party candidates for President and Vice President of the United States, various Minnesota voters who alleged a desire to vote for these candidates, and the Communist Parties of the United States and of Minnesota. The appellant candidates obtained petitions containing the requisite number of names and asked the Secretary of State of Minnesota to place them on the ballot for the 1968 election. The Secretary denied the request, relying upon an opinion by the Attorney General of the State to the effect that placing Communist Party candidates on the ballot would violate the Federal Communist Control Act of 1954, 68 Stat. 775, 50 U. S. C. §§ 841–842, which declares that the Communist Party "should be outlawed," and purports to strip it of all "rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof . . . ."

The appellants brought an action in the United States District Court for the District of Minnesota seeking a declaration that the Communist Control Act was constitutionally invalid and praying for a temporary re-

June 4, 1970

Re: No. 726 - Mitchell v. Donovan

Dear Potter:

Please join me in the per curiam you have prepared in this case.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
USTICE THURGOOD MARSHALL

June 10, 1970

Re: No. 726 - Mitchell v. Donovan

Dear Potter:

Please join me in your per curiam in this case.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference