The Burger Court Opinion Writing Database

Boys Markets, Inc. v. Retail Clerks

398 U.S. 235 (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

May 27, 1970

Dear Bill:

I am prepared to join your opinion in No. 768 overruling Sinclair.

I have two slight problems:

(1) Page 14, first full ¶, seems to me to take on more than we need to. Would you consider softening it to read something like this:

> "The literal terms of § 4 of the Norris-LaGuardia Act must be accommodated to provisions of the subsequently enacted § 301(a) of the Labor-Management Relations Act, the realities of the relationship and the purposes of the arbitration. Statutory interpretation . . . ."

(2) Page 19, penultimate sentence, seems a little hard on the Court of Appeals which could hardly foresee our overruling Sinclair. Would you consider something like this in place of the existing sentence:

> "Since we now overrule Sinclair the holding of the Court of Appeals in reliance on Sinclair must be ~~vacated.~~"

Cordially,

WEB

Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

No. 768.—October Term, 1969

The Boys Markets, Inc., Petitioner, *v.* Retail Clerk's Union, Local 770. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1970]

Mr. Justice Black, dissenting.

Congress in 1932 enacted the Norris-LaGuardia Act, § 4 of which, 29 U. S. C. § 104, with exceptions not here relevant, specifically prohibited federal courts in the broadest and most comprehensive language from issuing any injunctions, temporary or permanent, against participation in a labor dispute. Subsequently, in 1947, Congress gave jurisdiction to the federal courts in "suits for violation of contracts between an employer and a labor organization." Although, this section, § 301 of the Taft-Hartley Act, 29 U. S. C. § 185 (a), explicitly waives the diversity and amount-in-controversy requirements for federal jurisdiction, it says nothing at all about granting injunctions. Eight years ago this Court considered the relation of these two statutes: after full briefing and argument, relying on the language and history of the acts, the Court decided that Congress did not wish this later statute to impair in any way Norris-LaGuardia's explicit prohibition against injunctions in labor disputes. *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962).

Although Congress has been urged to overrule our holding in *Sinclair*, it has steadfastly refused to do so. Nothing in the language or history of the two Acts has changed. Nothing at all has changed, in fact, except the membership of the Court and the personal views of

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 19, 1970

Dear Bill:

In No. 768 - Boys Market v. Clerks Union, please join me in your opinion.

W. O. D.

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

May 20, 1970

Re: No. 768 - Boys Market v. Local 770

Dear Bill:

I am glad to join your very excellent and solid opinion.

Sincerely,

J. M. H.

Mr. Justice Brennan

CC: The Conference

Circulated
5-19-70

SUPREME COURT OF THE UNITED STATES

No. 768.—OCTOBER TERM, 1969

The Boys Markets, Inc., Petitioner, *v.* Retail Clerk's Union, Local 770.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In this case we re-examine the holding of *Sinclair Refining Co.* v. *Atkinson,* 370 U. S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act[1] preclude a federal district court from enjoining a strike in breach of a no-strike obligation under a collective

[1] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

. . . . . .

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

. . . . . .

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified . . . ." 29 U. S. C. § 104.

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SUPREME COURT OF THE UNITED STATES

No. 768.—October Term, 1969

The Boys Markets, Inc., Petitioner, *v.* Retail Clerk's Union, Local 770.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

In this case we re-examine the holding of *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act[1] preclude a federal district court from enjoining a strike in breach of a no-strike obligation under a collective

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"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

. . . . . .

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified . . . ." 29 U. S. C. § 104.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 27, 1970

768 - Boys Markets v. Clerks

Dear Bill,

I am glad to join your opinion for the Court in this case. Later today I shall circulate a short concurrence.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 768.—October Term, 1969

The Boys Markets, Inc., Petitioner, *v.* Retail Clerk's Union, Local 770. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1970]

Mr. Justice Stewart, concurring.

When *Sinclair Refining Co.* v. *Atkinson,* 370 U. S. 195, was decided in 1962, I subscribed to the opinion of the Court. Before six years had passed I had reached the conclusion that the *Sinclair* holding should be reconsidered, and said so in *Avco Corp.* v. *Aero Lodge No. 735,* 390 U. S. 557, at 562 (concurring opinion). Today I join the Court in concluding "that *Sinclair* was erroneously decided and that subsequent events have undermined its continuing validity."

In these circumstances the temptation is strong to ~~embark upon a lengthy personal *apologia*.~~ ~~But since~~ Mr. Justice Brennan has so clearly stated my present views in his opinion for the Court today, I simply join in that opinion and in the Court's judgment. An aphorism of Mr. Justice Frankfurter provides me refuge: "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee* v. *Union Planters Bank,* 335 U. S. 595, at 600 (dissenting opinion).

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

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5-27-70

Recirculated:

No. 768.—October Term, 1969

The Boys Markets, Inc., Petitioner, *v.* Retail Clerk's Union, Local 770. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1970]

Mr. Justice White dissents for the reasons stated in the majority opinion in *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962).