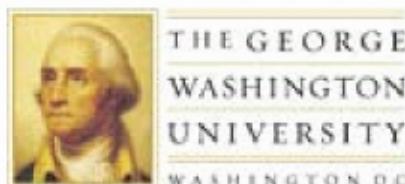


The Burger Court Opinion Writing Database

Organization for a Better Austin v. Keefe
402 U.S. 415 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



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

1st DRAFT

From: The Chief Justice

Circulated: APR 28 1971

Recirculated:

No. 135.—OCTOBER TERM, 1970

Organization For a Better
Austin et al., Petitioners, } On Writ of Certiorari to the
v. Appellate Court of Illi-
nois, First District.
Jerome M. Keefe.

[May —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider the claim that an order of the Circuit Court of Cook County, Illinois, enjoining petitioners from distributing leaflets anywhere in the town of Austin, Illinois, violates petitioners' rights under the Federal Constitution.

Petitioner Organization for a Better Austin (OBA) is a racially integrated community organization in the Austin neighborhood of Chicago. Respondent is a real estate broker whose office and business activities are in the Austin neighborhood. He resides in Westchester, Illinois, a suburb of Chicago some seven miles from the Austin area.

OBA is an organization whose stated purpose is to "stabilize" the racial ratio in the Austin area. For a number of years the boundary of the Negro segregated area of Chicago has moved progressively west to Austin. OBA, in its efforts to "stabilize" the area, as it describes its program, has opposed and protested various real estate tactics and activities generally known as "blockbusting" and, as the briefs describe it, "panic peddling." It was the contention of the OBA that respondent had been one of those who engaged in these tactics, specifically

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

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1971

Re: No. 135 - Organization for a Better Austin v. Keefe

MEMORANDUM TO THE CONFERENCE:

Enclosed is second draft of opinion in the above with minor language changes at points indicated. No change in substance is involved.

I retain the view expressed at Conference that this case could well be disposed of by dismissal for want of a properly presented federal question, but if we must write, I believe this is a narrow disposition.

Regards,

W.B.

Changes Throughout

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 135.—OCTOBER TERM, 1970

For the Chief Justice
 Circulated:

Recirculated: MAY 6 1971

Organization For a Better
 Austin et al., Petitioners, } On Writ of Certiorari to the
 v. } Appellate Court of Illi-
 nois, First District.
 Jerome M. Keefe.

[May —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider the claim that an order of the Circuit Court of Cook County, Illinois, enjoining petitioners from distributing leaflets anywhere in the town of Westchester, Illinois, violates petitioners' rights under the Federal Constitution.

Petitioner Organization for a Better Austin (OBA) is a racially integrated community organization in the Austin neighborhood of Chicago. Respondent is a real estate broker whose office and business activities are in the Austin neighborhood. He resides in Westchester, Illinois, a suburb of Chicago some seven miles from the Austin area.

OBA is an organization whose stated purpose is to "stabilize" the racial ratio in the Austin area. For a number of years the boundary of the Negro segregated area of Chicago has moved progressively west to Austin. OBA, in its efforts to "stabilize" the area—so it describes its program—has opposed and protested various real estate tactics and activities generally known as "blockbusting" or "panic peddling."

It was the contention of OBA that respondent had been one of those who engaged in such tactics, specifically

peddling

April 29, 1971

Dear Chief,

Re: No. 135 - Organization For a Better
Austin, et al. v. Keele.

I agree.

Sincerely,

Hugo

The Chief Justice

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 13, 1971

Dear Chief; -

Re: No. 135 - Organization for a Better
Austin v. Keefe

I am still with you.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

April 28, 1971

Dear Chief:

In No. 135 - OBA v. Keefe,
please join me in your opinion.

W. O. D.

The Chief Justice

WD adm

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES
From: Harlan, J.

No. 135.—OCTOBER TERM, 1970

Circulated: MAY 6 1971

Organization For a Better
Austin et al., Petitioners, } Recirculated:
v. } On Writ of Certiorari to the
Jerome M. Keefe. } Appellate Court of Illi-
nois, First District.

[May —, 1971]

MR. JUSTICE HARLAN, dissenting.

In deciding this case on the merits, the Court, in my opinion, disregards the express limitation of our appellate jurisdiction to “[f]inal judgments or decrees,” 28 U. S. C. § 1257, and does so in a way which undermines the policies behind limiting our review to judgments “rendered by the highest court of a State in which a decision could be had,” and interferes with Illinois’ arrangements for the expeditious processing of litigation in its own state courts.

It is plain, and admitted by all, that the “temporary” or “preliminary” injunction entered by the Circuit Court of Cook County and affirmed by the Appellate Court, First District, is not a final judgment. Review of preliminary injunctions is a classic form of interlocutory appeal, which Congress has authorized in limited instances not including review by this Court of state decrees. See 28 U. S. C. §§ 1252, 1253; cf. 28 U. S. C. § 1292 (a)(1). Despite the seemingly absolute provision of the statute, the Court holds that this case is within the judicially created exception for instances in which the affirmance of the interlocutory order by the highest state court decides the merits of the dispute for all practical purposes, leaving the remaining proceedings in the lower courts as nothing more than a formality. See *Pope v. Atlantic Coast Line R. Co.*, 345 U. S. 379, 382 (1953); *Construc-*

4

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 135.—OCTOBER TERM, 1970

Circulated:

Organization For a Better
Austin et al., Petitioners, } Recirculated: **MAY 14 1971**
v. } On Writ of Certiorari to the
Jerome M. Keefe. } Appellate Court of Illi-
nois, First District.

[May 17, 1971]

MR. JUSTICE HARLAN, dissenting.

In deciding this case on the merits, the Court, in my opinion, disregards the express limitation of our appellate jurisdiction to “[f]inal judgments or decrees,” 28 U. S. C. § 1257, and does so in a way which undermines the policies behind limiting our review to judgments “rendered by the highest court of a State in which a decision could be had,” *ibid.*, and interferes with Illinois’ arrangements for the expeditious processing of litigation in its own state courts.

It is plain, and admitted by all, that the “temporary” or “preliminary” injunction entered by the Circuit Court of Cook County and affirmed by the Appellate Court, First District, is not a final judgment. Review of preliminary injunctions is a classic form of interlocutory appeal, which Congress has authorized in limited instances not including review by this Court of state decrees. See 28 U. S. C. §§ 1252, 1253; cf. 28 U. S. C. § 1292 (a)(1). Despite the seemingly absolute provision of the statute, the Court holds that this case is within the judicially created exception for instances in which the affirmance of the interlocutory order by the highest state court decides the merits of the dispute for all practical purposes, leaving the remaining proceedings in the lower courts as nothing more than a formality. See *Pope v. Atlantic Coast Line R. Co.*, 345 U. S. 379, 382 (1953); *Construc-*

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1971

RE: No. 135 - Organization for a Better
Austin v. Keefe

Dear Chief:

Please join me.

Sincerely,



W. J. B. Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 28, 1971

No. 135 - Org. for Better Austin v. Keefe

Dear Chief,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

PS/
P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1971

Re: No. 135 - Organization For a
Better Austin v. Keefe

Dear Chief:

Please join me.

Sincerely,



B.R.W.

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1971

Re: No. 135 - Organization for a Better
Austin v. Keeve

Dear Chief:

Please join me.

Sincerely,


T.M.

The Chief Justice

cc: The Conference

April 30, 1971

Re: No. 135 - Organization for a Better
Austin V. Keesee

Dear Child:

Please join me. I assume the obvious error
in the fourth line of the first paragraph has been
corrected.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference