

# 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

*2 April*

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: APR 28 1971

Recirculated: \_\_\_\_\_

No. 135.—OCTOBER TERM, 1970

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

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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

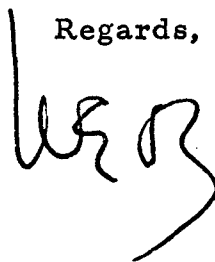
Re: No. 135 - Organization for a Better Austin v. Keefe

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,



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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

From the Chief Justice

Circulated:

Rescanceled: MAY 6 1971

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

[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 "block-busting" 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. Keefe.

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,

A handwritten signature in dark ink, appearing to be 'H. L. B.' with a small flourish at the end.

H. L. B.

The Chief Justice

cc: Members of the Conference

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

April 28, 1971

Dear Chief:

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

W. O. D.

The Chief Justice

WD admin

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,  
v.  
Jerome M. Keefe.

Recirculated: \_\_\_\_\_  
On Writ of Certiorari to the  
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-*



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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,  
v.  
Jerome M. Keefe.

On Writ of Certiorari to the  
Appellate Court of Illi-  
nois, First District.

Recirculated: **MAY 14 1971**

[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,

P.S.  
✓

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

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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. Keefe

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Dear Chief:

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