The Burger Court Opinion Writing Database

Perkins v. Matthews

400 U.S. 379 (January 14, 1971)

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

November 24, 1970

Re: No. 46 - Perkins v. Matthews

Dear Bill:

I have reservations as to the disposition proposed. As your memo points out we left that open at Conference.

It seems to me none of the problem areas were terribly serious and some de minimis and perhaps the Allen treatment would be sufficient.

Regards,

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

December 2, 1970

Re: No. 46 - Perkins v. Matthews

Dear Harry:

I am inclined to agree with the result of your position in your separate opinion but I am not so sure of the reasons.

(1) Doesn't the Act give exclusive judicial power to the USDC for the D. C.;

(2) is not the permissible scope inquiry whether the subject matter must be submitted for the D. C. Court's approval and not whether discrimination is involved;

(3) a minor matter: unless the record shows that the vote result had a margin more than the shift of the 212 would alter, how can the 212 figure be de minimis?

Regards,

WEB

Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

January 11, 1971

Re: No. 46 - Perkins v. Matthews

Dear Harry:

Please join me in your position in the above.

Regards,

WEB

Mr. Justice Blackmun

cc: The Conference

Dear Bill
I think this is
where I wind up. Sorry
to hold you up.
HAB

SUPREME COURT OF THE UNITED STATES

No. 46.—October Term, 1970

Ernest Perkins et al., Appellants, *v.* L. S. Matthews, Mayor of the City of Canton, et al. | On Appeal From the United States District Court for the Southern District of Mississippi.

[December —, 1970]

Mr. Justice Black, dissenting.

In *South Carolina* v. *Katzenbach,* 383 U. S. 301 (1966), this Court upheld the Voting Rights Act of 1965 as a legitimate exercise of congressional power to enforce the provisions of the Fifteenth Amendment. I agreed with the majority that Congress had broad power under § 2 of the Fifteenth Amendment to enforce the ban on racial discrimination in voting. However, I dissented vigorously from the majority's conclusion that every part of § 5 of the Voting Rights Act was constitutional. The fears which participated my dissent in *Katzenbach* have been fully realized in this case. The majority, relying on *Katzenbach,* now actually holds that the City of Canton, Mississippi, a little town of 10,000 persons, cannot change four polling places for its election of aldermen without first obtaining federal approval.

Section 5 of the Voting Rights Act provides that no political subdivision subject to the Act may adopt any voting law or election practice different from that in effect on November 1, 1964, without first going all the way to Washington to submit the proposed change to the United States Attorney General or to obtain a favorable declaratory judgment from the United States Dis-

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[December —, 1970]

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p. 9

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

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 46.—October Term, 1970

Circulated:

Recirculated: 1/12/71

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[January —, 1971]

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Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Brennan, J.

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Recirculated: _____

SUPREME COURT OF THE UNITED STATES

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[November —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, 42 U. S. C. § 1973c (1964 ed., Supp. V),[1] provides that whenever a State or political subdivision covered by the

[1] The full text of § 5 provides:

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On Appeal From the United States District Court for The Southern District of Mississippi.

[December —, 1970]

Mr. Justice Harlan, concurring in part and dissenting in part.

Our role in this case, as the Court recognizes, is exceedingly limited; we may determine only whether the city of Canton denied anyone the right to vote in its 1969 municipal elections for failure to comply with any "standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," 42 U. S. C. § 1973c (Supp. V, 1970), and if so, what remedy is appropriate.[1] Because of this limited scope, I am unable to join the dissenting opinion of Mr. Justice Black, *post*, p. —, although like him I see little likelihood that the changes here involved had a discriminatory purpose or effect.

I agree with the Court, and for substantially the reasons it gives, that the relocation of polling places should have been submitted for approval under § 5. Such a change alters "the manner in which elections are conducted," and therefore is covered by § 5 even under the narrower construction of the section I advocated in

[1] It is conceded that the city did not obtain the approval of the Attorney General or of the District Court for the District of Columbia as provided by § 5 of the Act, which this Court sustained in *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966).

Completely revised

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

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 46.—October Term, 1970

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Recirculated: JAN 5 1971

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On Appeal From the United States District Court for The Southern District of Mississippi.

[January —, 1971]

Mr. Justice Harlan, concurring in part and dissenting in part.

Our role in this case, as the Court correctly recognizes, is limited to determination whether § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c, required the city of Canton to obtain federal approval of the way it proposed to run its 1969 elections. For this reason, I am unable to join the dissenting opinion of Mr. Justice Black, *post,* p. —, although like him I see little likelihood that the changes here involved had a discriminatory purpose or effect.

I agree with the Court, and for substantially the reasons it gives, that the city should have submitted the relocation of polling places for federal approval. But I cannot agree that it was obliged to follow that course with respect to the other two matters here at issue.

I

Whether or not Congress could constitutionally require a State to submit all changes in its laws for federal approval, cf. *South Carolina* v. *Katzenbach,* 383 U. S. 301, 358–362 (1966) (Black, J., dissenting), the Voting Rights Act does not purport to do so. Section 5 requires submission of changes "with respect to voting" only.

3,4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
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SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF THE UNITED STATES

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[1] The full text of § 5 provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4 (a) [1973b (2)] are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attor-

MEMORANDUM TO THE CONFERENCE

RE: No. 46 - Perkins v. Matthews

My conference notes suggest that we reached no definite conclusion upon the proper disposition of this case beyond a consensus that the prospective disposition made in Allen would be inappropriate. The alternatives seem to be (1) reverse and direct the entry of a new judgment setting aside the election but affording Canton a reasonable time within which to submit the changes to the Attorney General or the District Court of the District of Columbia, and have the new election conducted with or without the changed procedures, depending on whether the submission is made, and if made, upon its result; or (2) reverse and direct the District Court to decide whether to set aside the election or simply enter a new judgment declaring the changed procedures covered by § 5 and enjoining their use at future elections if not submitted for federal scrutiny in compliance with § 5.

The enclosed circulation adopts alternative (1) for the reasons stated in the opinion. It seems to me that this disposition is necessary to teach covered States and subdivisions that § 5 does have teeth.

W.J.B. Jr.

November 19, 1970

SUPREME COURT OF THE UNITED STATES

No. 46.—October Term, 1970

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SUPREME COURT OF THE UNITED STATES

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See pp. 3, 10-18

Circulated 12-14-70

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WB

January 5, 1971

RE: No. 46 - Perkins v. Matthews

Dear Potter:

Now that John has circulated his concurrence and dissent I've attempted to tailor the attached to meet your suggestion at the last conference that I was a little too harsh on Canton. My suggestion is that I delete the discussion at the bottom of page 16. Does that meet your thought? I'll not send this to the Printer until I've heard from you.

Sincerely,

Mr. Justice Stewart

Circulated
1-6-71

SUPREME COURT OF THE UNITED STATES

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[December —, 1970]

Mr. Justice Stewart, concurring in part and dissenting in part.

I concur in Parts I and II of the Court's opinion, holding that in light of our decision in *Allen* v. *State Board of Elections,* 393 U. S. 544, the changes in election procedures involved in this case were of such a nature as to require submission to the Attorney General of the United States or to the United States District Court for the District of Columbia under § 5 of the Voting Rights Act of 1965, 79 Stat. 439, 42 U. S. C. § 1973c (1964 ed., Supp. V). I dissent from § III of the Court's opinion which rules that the City of Canton must hold a new election regardless of whether or not the changes in its election procedures are ultimately found to have been discriminatory.

The purpose of § 5 of the Act was to provide an effectual means for safeguarding the existing Fifteenth Amendment rights of voters. Before the Act was passed, a voter who could establish that changes in election procedures had been made and enforced in order to deprive him of his vote on the basis of race had a right of action under the Fifteenth Amendment. *E. g., Gomillion* v. *Lightfoot,* 364 U. S. 339; *Smith* v. *Allwright,* 321 U. S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 6, 1971

46 - Perkins v. Matthews

Dear Bill,

Your opinion for the Court, as circulated today, is entirely satisfactory with me and I am glad to join it. This means, of course, that I shall withdraw the separate opinion I circulated some time ago.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 18, 1970

Re: No. 46 - Perkins v. Matthews

Dear Bill:

Although I was the other way in some respects, I am glad to join your opinion in this case.

Sincerely,

B.R.W.

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1970

No. 46 - Perkins v. Matthews, Mayor of Canton

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 16, 1970

Re: No. 46 - Perkins v. Matthews, Mayor

Dear Bill:

I join your latest circulation in this case.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

August 21, 1970

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

Re: Voting rights cases

Dear Chief:

As I advised your office by telephone today, I vote in favor of the entry of the order proposed in your telegram of August 21, 1970.

Sincerely,

H. A. Blackmun

cc Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

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

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11/25/70

No. 46.—October Term, 1970

Recirculated: _____

Ernest Perkins et al., Appellants, *v.* L. S. Matthews, Mayor of the City of Canton, et al.	On Appeal From the United States District Court for the Southern District of Mississippi.

[December —, 1970]

Mr. Justice Blackmun, concurring in part and dissenting in part.

In view of the decision in *Allen* v. *State Board of Elections*, 393 U. S. 544 (1969), I join in Parts I and II of the Court's opinion and in the judgment of reversal.

I question the advisability, however, of the Court's remanding the case with specific directions to enter a new judgment setting aside the October 1969 elections and providing for new elections. It seems to me that, in the light of the record which is before us, the nature of the complaints, and, in particular, the fact that the two annexations complained of (an earlier one in 1965 is not challenged) served to add only 212 adults to the city which then had a total of approximately 6,000 qualified electors, the likely effect of the procedures complained of on the 1969 elections results is minimal.

I, therefore, would prefer to remand the case to the District Court for further proceedings as that court (acting then, of course, through a single judge) determines. The District Court knows the local situation far better than we. Certainly we should not render the city of Canton utterly bereft of municipal government until the new elections are held, a result which may well follow upon our direction to set aside the 1969 elections.

December 2, 1970

Re: No. 46 - Perkins v. Matthews

Dear Chief:

I shall attempt an answer to the questions you raise in your letter of December 2. They present themselves probably because I may not have expressed myself too well in my partial concurrence.

1 & 2. The Act, of course, gives exclusive judicial power to the USDC for the District of Columbia so far as the permissible or non-permissible features of the election changes are concerned. Other judicial power, however, is in the USDC for the SD Miss. Mr. Justice Brennan spells this out in Part I of his opinion when he says that the 3-judge court's only issue is whether a change is subject to the provisions of the act. I have further assumed, I hope not erroneously, that there is still other power in the SD Miss., namely, as to what to do on our reversal. As I read the majority opinion, the court is directed to set aside the 1969 elections and to provide appropriately for new elections. If the elections are set aside, does everyone go out of office?

It seems to me that the Mississippi court ought to have some power by which it may retain present officials in office and push the authorities to get their approval either from the AG or the USDC of the District of Columbia. If that approval is forthcoming (as, on these facts, I think it should be) then, it seems to me, a new election may not be required. This result would be essentially what was done in the Allen case, and it is reminiscent of what the Court did in a criminal context in Jackson v. Denno.

Certainly the Mississippi court does not have the power to pass on any act of discrimination. Perhaps I could clarify this by adding the phrase "within the limitation specified in Allen, and in Part I of the Court's opinion" at the end of the third line of the last paragraph on page 1 of my proposed opinion.

3. I perhaps overemphasized the 212 figure. I meant it in contrast to the larger aggregate figure employed by Mr. Justice Black at the foot of page 3 of his dissent. He is in error, I think, in two respects. The first annexation is not challenged, 301 F. Supp. at 566, although HLB says the majority finds a violation in that annexation as well as in the two later ones. His larger figures do not jibe with those found by the district court; he uses figures for which there is some evidence, but they do not seem to be traceable into the formal findings. The 212, when it is broken down by race, is, I believe, insignificant if race is what we are talking about. I did not expand at this point because I thought it sufficiently covered in the majority opinion.

Sincerely,

HAB

The Chief Justice

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

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 46.—October Term, 1970

Recirculated: 12/2/70

Ernest Perkins et al., Appellants, *v.* L. S. Matthews, Mayor of the City of Canton, et al.	On Appeal From the United States District Court for the Southern District of Mississippi.

[December —, 1970]

Mr. Justice Blackmun, concurring in part and dissenting in part.

Given the decision in *Allen* v. *State Board of Elections*, 393 U. S. 544 (1969), a case not cited by the District Court, I join in Parts I and II of the Court's opinion and in the judgment of reversal.

I question the advisability, however, of the Court's remanding the case with specific directions to enter a new judgment setting aside the October 1969 elections and providing for new elections. It seems to me that, in the light of the record which is before us, the nature of the complaints, and, in particular, the fact that the two annexations complained of (an earlier one in 1965 is not challenged) served to add only 212 adults* to the city which then had a total of approximately 5,900 qualified electors, the likely effect of the procedures complained of on the 1969 election results is minimal.

I, therefore, would prefer to remand the case to the District Court for further proceedings as that court (acting then, of course, through a single judge) determines. The District Court knows the local situation far better than we. Certainly we should not render the city of Canton utterly bereft of municipal government until

*As found by the District Court. 301 F. Supp., at 566.

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

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 46.—October Term, 1970

Recirculated: 12/18/70

Ernest Perkins et al., Appellants, *v.* L. S. Matthews, Mayor of the City of Canton, et al.	On Appeal From the United States District Court for the Southern District of Mississippi.

[December —, 1970]

Mr. Justice Blackmun, concurring.

Given the decision in *Allen* v. *State Board of Elections*, 393 U. S. 544 (1969), a case not cited by the District Court, I join in the judgment of reversal and in the order of remand.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 46.—October Term, 1970

Recirculated: 1/12/71

Ernest Perkins et al., Appellants, *v.* L. S. Matthews, Mayor of the City of Canton, et al.	On Appeal From the United States District Court for the Southern District of Mississippi.

[January —, 1971]

Mr. Justice Blackmun, with whom The Chief Justice joins, concurring.

Given the decision in *Allen* v. *State Board of Elections,* 393 U. S. 544 (1969), a case not cited by the District Court, I join in the judgment of reversal and in the order of remand.