

The Burger Court Opinion Writing Database

Law Students Civil Rights Research Council, Inc. v. Wadmond

401 U.S. 154 (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

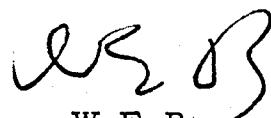
November 20, 1970

Re: No. 49 - Law Students Civil Rights Research Council, Inc.
v. Wadmond

Dear Potter:

Join me in your affirmance in the above case.

Regards,


W.E.B.

Mr. Justice Stewart

cc: The Conference

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

1

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

circulated:

NOV 30 1970

Law Students Civil Rights
Research Council, Inc.,
et al., Appellants,
v.
Lowell Wadmond et al.

On Appeal From the United
States District Court for
the Southern District of
New York.

Recd

[December —, 1970]

MR. JUSTICE BLACK, dissenting.

Of course I agree that a State may require that applicants and members of the Bar possess the good "character and general fitness requisite for an attorney." But it must be remembered that the right of a lawyer or Bar applicant to practice his profession is often more valuable to him than his home, however expensive that home may be. Therefore I think that when a State seeks to deny an applicant admission or to disbar a lawyer, it must proceed according to the most exacting demands of due process of law. This must mean at least that the right of a lawyer or Bar applicant to practice cannot be left to the mercies of his prospective or present competitors. When it seeks to deprive a person of the right to practice law, a State must accord him the same rights as when it seeks to deprive him of any other property. Perhaps almost anyone would be stunned if a State sought to take away a man's house because he failed to prove his loyalty or refused to answer questions about his political beliefs. But it seems to me that New York is attempting to deprive people of the right to practice law for precisely these reasons, and the Court is approving its actions.

Here the Court upholds a New York law which requires that a Bar applicant not be admitted "unless

Minor changes throughout

Mr. Justice B.
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3

SUPREME COURT OF THE UNITED STATES

For presentation J.
Circulated:

No. 49.—OCTOBER TERM, 1970

Pre-circulated:

DEC

2 1970

Law Students Civil Rights
Research Council, Inc.,
et al., Appellants,
v.
Lowell Wadmond et al. } On Appeal From the United
States District Court for
the Southern District of
New York.

[December —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS
joins, dissenting.

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Stylistic Changes Throughout

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

Circulated:

Recirculated

FEB 22 1971

Law Students Civil Rights
Research Council, Inc.,
et al., Appellants,
v.
Lowell Wadmond et al.

On Appeal From the United
States District Court for
the Southern District of
New York.

[February 23, 1971]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS
joins, dissenting.

Of course I agree that a State may require that applicants and members of the Bar possess the good "character and general fitness requisite for an attorney." But it must be remembered that the right of a lawyer or Bar applicant to practice his profession is often more valuable to him than his home, however expensive that home may be. Therefore I think that when a State seeks to deny an applicant admission or to disbar a lawyer, it must proceed according to the most exacting demands of due process of law. This must mean at least that the right of a lawyer or Bar applicant to practice cannot be left to the mercies of his prospective or present competitors. When it seeks to deprive a person of the right to practice law, a State must accord him the same rights as when it seeks to deprive him of any other property. Perhaps almost anyone would be stunned if a State sought to take away a man's house because he failed to prove his loyalty or refused to answer questions about his political beliefs. But it seems to me that New York is attempting to deprive people of the right to practice law for precisely these reasons, and the Court is approving its actions.

To: The Chief
 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

No. 49.—OCTOBER TERM, 1970

From: Black, J.

Circulated: NOV 30 1970

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al.

On Appeal From the ^{Received}
 United States District Court for
 the Southern District of
 New York.

[December —, 1970]

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Here the Court upholds a New York law which requires that a Bar applicant not be admitted "unless

*Recd
for
Temp
WPA*

February 3, 1971

Re: No. 49 - Law Students v. Wadmond

Dear Potter:

I am glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 1, 1970

RE: No. 49 - Law Students Civil Rights Research Council, et al. v. Wadmond, et al.

Dear Hugo:

Will you please add at the foot of your opinion the following:

"Mr. Justice Brennan is in agreement with Mr. Justice Black that the First Amendment prohibits the inquiries involved in this case and therefore dissents."

Sincerely,



Mr. Justice Black

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. February 19, 1971

RE: No. 49 - Law Students, etc. v. Wadmond

Dear Thurgood:

Please join me in your dissent.

Sincerely,


W. J. B. Jr.

Mr. Justice Marshall

cc: The Conference

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

From: Stewart, J.

1 Circulated: Nov 19 1970

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al.

On Appeal From the United
 States District Court for
 the Southern District of
 New York.

[November —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

An applicant for admission to the Bar of New York must be a citizen of the United States, have lived in the State for at least six months, and pass a written examination conducted by the State Board of Law Examiners. In addition, New York requires that the Appellate Division of the State Supreme Court in the judicial department where an applicant resides must "be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law." New York Judiciary Law § 90 (1)(a) (McKinney 1968).¹ To carry out this provision, the New York Civil Practice Law and Rules require the appointment, in each of the four Judicial Departments into which the Supreme Court is divided, of a committee or committees on character

¹ The New York statute, rules, and affidavit forms relevant to the issues in this litigation are set out in the Appendix to this opinion.

These Rules, originally enacted by the State Legislature, may be amended either by the legislature or by the New York Judicial Conference. N. Y. Judiciary Law § 229 (3) (McKinney 1968); N. Y. Civ. Prac. Law & Rules, Rule 102 (McKinney 1963).

should be 2A P. 2
 not 2 on p. 2

P. 1, 3, 7, 8

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

2

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

Received: NOV 20 1970

Recirculated:

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al.

On Appeal From the United
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[December —, 1970]

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² N. Y. Civ. Prac Law & Rules, Rule 9401 (McKinney 1963); see also *id.*, Rule 9404.

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5 3 11

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

from: Stewart, J.

Circulated:

DEC 2 1970

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al.

On Appeal From the United
 States District Court for
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 New York.

[December —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

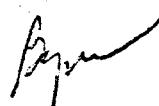
February 8, 1971

Re: No. 49 - Law Students Civil Rights Research
Council v. Wadmond

Dear Potter:

Please join me in your opinion for the
Court in this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

1

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

No. 49.—OCTOBER TERM, 1970

Circulated: DEC 18 1970

Law Students Civil Rights Research Council, Inc., et al., Appellants, v. Lowell Wadmond et al. } On Appeal From the United States District Court for the Southern District of New York.

Recirculated:

[January —, 1971]

MR. JUSTICE MARSHALL, dissenting.

This litigation began with a comprehensive constitutional attack by appellants on long-standing state rules and practices for screening applicants for admission to the New York Bar.¹ During the course of the litigation some of these practices were changed by appellees; others were found wanting by the three-judge court below, and changed as a result of that court's opinion and its final order. Now we face the residuum of the appellants' original challenge, and the Court today ratifies everything left standing by the court below. I dissent from that holding because I believe that appellants' basic First Amendment complaint, transcending the particulars of the attack, retains its validity. The underlying complaint, strenuously and consistently urged, is that New York's screening system focuses impermissibly on the political activities and viewpoints of Bar applicants, that the scheme thereby operates to inhibit the exercise of protected expressive and associational freedoms by law students and others, and that this chilling effect is not justified as the necessary impact of a system designed

¹ The attack is upon rules of statewide application and practices administered by appellees in the First and Second Judicial Departments.

STYLISTIC CHANGES THROUGHOUT.

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1970

From: Marshall, J.

Circulated:

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al. } On Appeal From the United States District Court for
 } the Southern District of New York.

[February —, 1971]

MR. JUSTICE MARSHALL, dissenting.

This litigation began with a comprehensive constitutional attack by appellants on long-standing state rules and practices for screening applicants for admission to the New York Bar.¹ During the course of the litigation some of these practices were changed by appellees; others were found wanting by the three-judge court below, and changed as a result of that court's opinion and its final order. Now we face the residuum of the appellants' original challenge, and the Court today ratifies everything left standing by the court below. I dissent from that holding because I believe that appellants' basic First Amendment complaint, transcending the particulars of the attack, retains its validity. The underlying complaint, strenuously and consistently urged, is that New York's screening system focuses impermissibly on the political activities and viewpoints of Bar applicants, that the scheme thereby operates to inhibit the exercise of protected expressive and associational freedoms by law students and others, and that this chilling effect is not justified as the necessary impact of a system designed

¹ The attack is upon rules of statewide application and practices administered by appellees in the First and Second Judicial Departments.

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

p.1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 49.—OCTOBER TERM, 1970

Circulated:

FEB 22 1971

Recirculated:

Law Students Civil Rights
 Research Council, Inc.,
 et al., Appellants,
 v.
 Lowell Wadmond et al. } On Appeal From the United
 States District Court for
 the Southern District of
 New York.

[February —, 1971]

MR. JUSTICE MARSHALL, whom MR. JUSTICE BRENNAN joins, dissenting.

This litigation began with a comprehensive constitutional attack by appellants on long-standing state rules and practices for screening applicants for admission to the New York Bar.¹ During the course of the litigation some of these practices were changed by appellees; others were found wanting by the three-judge court below, and changed as a result of that court's opinion and its final order. Now we face the residuum of the appellants' original challenge, and the Court today ratifies everything left standing by the court below. I dissent from that holding because I believe that appellants' basic First Amendment complaint, transcending the particulars of the attack, retains its validity. The underlying complaint, strenuously and consistently urged, is that New York's screening system focuses impermissibly on the political activities and viewpoints of Bar applicants, that the scheme thereby operates to inhibit the exercise of protected expressive and associational freedoms by law students and others, and that this chilling effect is not justified as the necessary impact of a system designed

¹ The attack is upon rules of statewide application and practices administered by appellees in the First and Second Judicial Departments.

November 23, 1970

Re: No. 49 - Law Students Civil Rights
Research Council v. Edmund

Dear Potter:

I concur in the opinion you have proposed for
this case.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference