

The Burger Court Opinion Writing Database

Socialist Labor Party v. Gilligan
406 U.S. 583 (1972)

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



B

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

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1972

Re: No. 70-21 - Socialist Labor Party v. Gilligan

Dear Bill:

Please join me.

Regards,

WB

Mr. Justice Rehnquist

Copies to the Conference

BD
WHD
Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 2, 1972

Dear Bill:

In No. 70-21 - Socialist Labor
Party v. Gilligan, I will in due course
circulate a dissent to your opinion.

W. O. D.

WHD

Mr. Justice Rehnquist

cc: Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

70
No. 71-21

FILED. U.S. DIST. CLERK, D.C.

Circulated: 5/17/72

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al.

On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

Memorandum from MR. JUSTICE DOUGLAS.

The oath required of appellants for political recognition in Ohio is plainly unconstitutional as a denial of equal protection. Because I believe this a proper case for declaratory relief, I would therefore reverse the judgment below.

In order to "be recognized or be given a place on ballot in any primary or general election," Ohio requires that members of political parties file a loyalty oath with the Secretary of State. Ohio Rev. Code § 3517.07 (1960) (see appendix to this opinion). I need not consider the vagueness or overbreadth of the Ohio oath, for my views on that subject have been stated over and again.* For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

*E. g., *Cole v. Richardson*, 405 U. S. — (1972) (dissenting opinion); *W. E. B. DuBois Clubs v. Clark*, 389 U. S. 309 (1967) (dissenting opinion); *Elfbrandt v. Russell*, 384 U. S. 11 (1966); *Nostrand v. Little*, 362 U. S. 474 (1960) (dissenting opinion); *First Unitarian Church v. Los Angeles*, 357 U. S. 545 (1958) (concurring opinion); *Speiser v. Randall*, 357 U. S. 513 (1958) (concurring opinion).

8 — 1/18/72
check them out
check

The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-21

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al.

On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

Memorandum from MR. JUSTICE DOUGLAS, with whom
MR. JUSTICE BRENNAN concurs.

The oath required of appellants for political recognition
in Ohio is plainly unconstitutional as a denial of
equal protection. Because I believe this a proper
case for declaratory relief, I would therefore reverse
the judgment below.

In order to "be recognized or be given a place on
ballot in any primary or general election," Ohio requires
that members of political parties file a loyalty oath with
the Secretary of State. Ohio Rev. Code § 3517.07
(1960) (see appendix to this opinion). I need not consider
the vagueness or overbreadth of the Ohio oath,
for my views on that subject have been stated over and
again.¹ For the present case, it is sufficient for my
decision that Ohio requires the oath based upon the
invidious classification of political allegiance.

¹ *E. g.*, *Cole v. Richardson*, 405 U. S. 676 (1972) (dissenting
opinion); *W. E. B. DuBois Clubs v. Clark*, 389 U. S. 309 (1967)
(dissenting opinion); *Elfbrandt v. Russell*, 384 U. S. 11 (1966);
Nostrand v. Little, 362 U. S. 474 (1960) (dissenting opinion); *First
Unitarian Church v. Los Angeles*, 357 U. S. 545 (1958) (concurring
opinion); *Speiser v. Randall*, 357 U. S. 513 (1958) (concurring
opinion).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

pp 6
3rd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-21

Recirculated: 5-19

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al. } On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

Memorandum from MR. JUSTICE DOUGLAS, with whom
MR. JUSTICE BRENNAN concurs.

The oath required of appellants for political recognition in Ohio is plainly unconstitutional as a denial of equal protection. Because I believe this a proper case for declaratory relief, I would therefore reverse the judgment below.

In order to "be recognized or be given a place on ballot in any primary or general election," Ohio requires that members of political parties file a loyalty oath with the Secretary of State. Ohio Rev. Code § 3517.07 (1960) (see appendix to this opinion). I need not consider the vagueness or overbreadth of the Ohio oath, for my views on that subject have been stated over and again.¹ For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

WJD
¹ *E. g.*, *Cole v. Richardson*, 405 U. S. 676 (1972) (dissenting opinion); *W. E. B. DuBois Clubs v. Clark*, 389 U. S. 309 (1967) (dissenting opinion); *Elbrandt v. Russell*, 384 U. S. 11 (1966); *Nostrand v. Little*, 362 U. S. 474 (1960) (dissenting opinion); *First Unitarian Church v. Los Angeles*, 357 U. S. 545 (1958) (concurring opinion); *Speiser v. Randall*, 357 U. S. 513 (1958) (concurring opinion).

While I voted the other way at conference, I find your
dissent persuasive enough to change my vote and join you.

TDJ

AM
Chas. F. Thompson
4th DRAFT

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 70-21

From: Douglas, J.

Circulate:

Serialized: 5/23/72

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al.

On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The oath required of appellants for political recognition in Ohio is plainly unconstitutional as a denial of equal protection. Because I believe this a proper case for declaratory relief, I would therefore reverse the judgment below.

In order to "be recognized or be given a place on ballot in any primary or general election," Ohio requires that members of political parties file a loyalty oath with the Secretary of State. Ohio Rev. Code § 3517.07 (1960) (see appendix to this opinion). I need not consider the vagueness or overbreadth of the Ohio oath, for my views on that subject have been stated over and again.¹ For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

¹ E. g., *Cole v. Richardson*, 405 U. S. 676 (1972) (dissenting opinion); *W. E. B. DuBois Clubs v. Clark*, 389 U. S. 309 (1967) (dissenting opinion); *Elfsbrandt v. Russell*, 384 U. S. 11 (1966); *Nostrand v. Little*, 362 U. S. 474 (1960) (dissenting opinion); *First Unitarian Church v. Los Angeles*, 357 U. S. 545 (1958) (concurring opinion); *Speiser v. Randall*, 357 U. S. 513 (1958) (concurring opinion).

31/7
WY
5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-21

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al. } On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The oath required of appellants for political recognition in Ohio is plainly unconstitutional as a denial of equal protection. Because I believe this a proper case for declaratory relief, I would therefore reverse the judgment below.

In order to "be recognized or be given a place on ballot in any primary or general election," Ohio requires that members of political parties file a loyalty oath with the Secretary of State. Ohio Rev. Code § 3517.07 (1960) (see appendix to this opinion). I need not consider the vagueness or overbreadth of the Ohio oath, for my views on that subject have been stated over and again.¹ For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 18, 1972

RE: No. 70-21 - Socialist Labor Party v.
Gilligan

Dear Bill:

Please join me in your memorandum in
the above.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Memorandum

no 70-21
19

Bul

Can't we resolve
* Cite only the
attacked? From what
I read of ITT, the
exempt corporation party
must be the same
as American Express
Bul

70-21

Uncertain addressee (addressor
Wm Brennan to Wm Douglas most likely?)

70-21- Wm Douglas, Oct 71-term

B M

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 2, 1972

No. 70-21 - Socialist Labor Party v. Gilligan

Dear Bill,

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

Sincerely yours,

P. S.

Mr. Justice Rehnquist

Copies to the Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 3, 1972

Re: No. 70-21 - Socialist Labor
Party v. Gilligan

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 22, 1972

Re: No. 70-21 - Socialist Labor Party v. Gilligan

Dear Bill:

While I voted the other way at conference, I find your dissent persuasive enough to change my vote and join you.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference

b

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 4, 1972

Re: No. 70-21 - Socialist Labor Party v. Gilligan

Dear Bill:

Please join me.

Sincerely,

HaB.

Mr. Justice Rehnquist

cc: The Conference

2
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

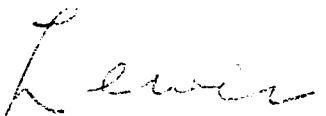
May 3, 1972

Re: 70-21 Socialist Labor Party v.
Gilligan

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

BY
/ ~~AM~~ *joined by P, HAB, SKW,
MD to dissent*

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-21

Recd: Rehnquist, J.

Circulated: 5/2/72

Recirculated: _____

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al.

On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Socialist Labor Party has engaged in a prolonged legal battle to invalidate various Ohio laws restricting minority party access to the ballot. Concluding that "the totality of the Ohio restrictive laws taken as a whole" violated the Equal Protection Clause of the Fourteenth Amendment, this Court struck down those laws in *Socialist Labor Party v. Rhodes*, 393 U. S. 23 (1968). Following that decision the Ohio Legislature revised the state election code, but the Party was dissatisfied with the revisions and instituted the present suit in 1970.

The Socialist Labor Party, its officers and members joined as plaintiffs in requesting a three-judge District Court to invalidate on constitutional grounds various sections of the revised election laws of Ohio. The plaintiffs specifically challenged provisions of the Ohio election laws requiring that a party either receive a certain percentage of the vote cast in the last preceding election or else file petitions of qualified electors corresponding to the same percentage; provisions relating to the organizational structure of a party; provisions requiring that

B M
Joined 10/20/71, 4, 6

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES
REHNQUIST, J.

No. 70-21

Circulated:

Recirculated:

5/22/72

Socialist Labor Party et al.,
Appellants,
v.
John J. Gilligan, Governor of
the State of Ohio, et al.

On Appeal from the United
States District Court for
the Southern District of
Ohio.

[May —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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The Socialist Labor Party, its officers and members joined as plaintiffs in requesting a three-judge District Court to invalidate on constitutional grounds various sections of the revised election laws of Ohio. The plaintiffs specifically challenged provisions of the Ohio election laws requiring that a party either receive a certain percentage of the vote cast in the last preceding election or else file petitions of qualified electors corresponding

¹ That case was decided together with *Williams v. Rhodes*, 393 U. S. 23 (1968).

TM for

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-21

From: Rehnquist, J.

Circulated: _____

Socialist Labor Party et al.,
Appellants, } On Appeal from the ~~United~~ ^{Rehnquist} Circulated: ~~5/23/72~~
v. } States District Court for
John J. Gilligan, Governor of the Southern District of
the State of Ohio, et al. Ohio.

[May —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Socialist Labor Party has engaged in a prolonged legal battle to invalidate various Ohio laws restricting minority party access to the ballot. Concluding that "the totality of the Ohio restrictive laws taken as a whole" violated the Equal Protection Clause of the Fourteenth Amendment, this Court struck down those laws in *Socialist Labor Party v. Rhodes*, 393 U. S. 23 (1968).¹ Following that decision the Ohio Legislature revised the state election code, but the Party was dissatisfied with the revisions and instituted the present suit in 1970.

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¹ That case was decided together with *Williams v. Rhodes*, 393 U. S. 23 (1968).