

# 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



3  
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,

WRB

Mr. Justice Rehnquist

Copies to the Conference

B  
M

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.  
W

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  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-21

From: Douglas, J.

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 over 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 —  
change 1/11/72

Mr. 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 over again.<sup>1</sup> For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

<sup>1</sup> 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: Mr. Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Thurgood  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist

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.<sup>1</sup> For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

<sup>1</sup> 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).

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

change + very hard

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas; J.

No. 70-21

Circulate: 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.<sup>1</sup> 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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34/7  
W  
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 over again.<sup>1</sup> For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

<sup>1</sup> *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).

6  
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,

*Bill*

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Memorandum

No 70-21  
19

Bul

Can't we reverse.  
 + cite only the  
 attached? From what  
 I read of ITT, the  
 exempt Republican 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

6  
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,

*H.A.B.*

Mr. Justice Rehnquist

cc: The Conference

9  
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,

*Lewis*

Mr. Justice Rehnquist

cc: The Conference

67  
M  
Joined by PS, JAB, BREW,  
PB -  
NOT 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

From: Rehnquist, J.

Circulated: 5/2/72

No. 70-21

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.
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[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. 141

Joined 10/27/72, 4, 6

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

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

Edmond 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]

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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

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

38  
M 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,  
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.

Re-circulated: 5/23/72

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