

# The Burger Court Opinion Writing Database

*United States v. Brewster*

408 U.S. 501 (1972)

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 30, 1971

MEMORANDUM TO THE CONFERENCE:

No. 70-45 -- U.S. v. Brewster

I enclose a first draft of my own view of a disposition of this appeal.

It is an important case and a close question that falls within the express reservation John Harlan carefully carved out in Johnson.

I do not propose action on this draft. Rather it is for information. It seems to me too important to dispose of with seven when we are likely weeks or even days from a full Court.

Regards,

WES

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

From: The Chief Justice

Circulated: 11/30/71

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

No. 70-45 -- U.S. v. Brewster

(WORK DRAFT (29Nov71))

CHIEF JUSTICE BURGER delivered the opinion of the Court.

This appeal presents the question whether a Member of Congress may be prosecuted for accepting a bribe in exchange for a promise to perform a certain official act under 18 U.S.C. §§ 201(c)(1), 201(g). Appellee, a former United States Senator, was charged in five counts <sup>1/</sup> of a ten-count indictment, with counts one, three, five, and seven alleging that on four separate occasions, appellee, a member of the Senate Committee on Post Office and Civil Service,

"directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his

<sup>1/</sup>

The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U.S.C. § 201(b).

6

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

January 17, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

No. 70-45 -- U.S. v. Brewster

I suggest this case should be set for re-  
argument.

Regards,

WB 03

To: Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]  
Mr. [redacted]

From: [redacted]  
Circular [redacted] 11/30/71  
Re: [redacted]

1  
3/17/72  
This was in no sense  
a draft opinion but an effort  
to get a "head count" before  
doing a final job on that  
"head count" I moved for reargument

No. 70-45 -- U.S. v. Brewster

(WORK DRAFT (29Nov71))

CHIEF JUSTICE BURGER delivered the opinion of the Court.

This appeal presents the question whether a Member of Congress may be prosecuted for accepting a bribe in exchange for a promise to perform a certain official <sup>legislative</sup> act under 18 U.S.C. §§ 201(c)(1), 201(g). Appellee, a former <sup>1/</sup> United States Senator, was charged in five counts <sup>1/</sup> of a ten-count indictment, with counts one, three, five, and seven alleging that on four separate occasions, appellee, a member of the Senate Committee on Post Office and Civil Service,

"directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his

<sup>1/</sup>  
The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U.S.C. § 201(b).

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ON WAR, REVOLUTION AND PEACE  
Sanford, California 94965-6000  
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For background

W3R

Les uns après les autres.

No. 70-45 -- U.S. v. Brewster

(WORK DRAFT (29Nov71))

This appeal presents the question whether a Member of Congress may be prosecuted for accepting a bribe in exchange for a promise to perform a certain official <sup>legislative</sup> act under 18 U.S.C. §§ 201(c)(1), 201(g). Appellee, a former United States Senator, was charged in five counts <sup>1/</sup> of a ten-count indictment, with counts one, three, five, and seven alleging that on four separate occasions, appellee, a member of the Senate Committee on Post Office and Civil Service.

"directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his

1/

The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U.S.C. § 201(b).

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 31, 1972

Re: No. 70-45 - U. S. v. Brewster

MEMORANDUM TO THE CONFERENCE:

Enclosed is first printed draft (labelled 2nd draft).

Since there are changes throughout, it is not feasible to mark them. No change in substance is made from the preliminary typed draft.

Regards,

WEB

*Please print me*  
*HP*

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

2nd DRAFT

From: The \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 31 1972

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

No. 70-45

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[May —, 1972]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This direct appeal from the District Court presents the question whether a Member of Congress may be prosecuted under 18 U. S. C. §§ 201 (c)(1), 201 (g), for accepting a bribe in exchange for a promise relating to an official act. Appellee, a former United States Senator, was charged with five counts of a 10-count indictment.<sup>1</sup> Counts one, three, five, and seven alleged that on four separate occasions, appellee, while he was a Senator and a member of the Senate Committee on Post Office and Civil Service,

"directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity . . . in violation of Sections 201 (c)(1) and 2, Title 18, United States Code."<sup>2</sup>

<sup>1</sup> The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U. S. C. § 201 (b).

<sup>2</sup> 18 U. S. C. § 2019 (c)(1) provides "Whoever, being a public official or person selected to be a public official, directly or indirectly corruptly asks, demands, exacts, solicits, seeks, accepts, receives,



14, 20, 26-7  
+ stylistic

To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

FROM: [redacted] [redacted]

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 70-45

Recirculated: JUN 15 1972

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[May —, 1972]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This direct appeal from the District Court presents the question whether a Member of Congress may be prosecuted under 18 U. S. C. §§ 201 (c)(1), 201 (g), for accepting a bribe in exchange for a promise relating to an official act. Appellee, a former United States Senator, was charged with five counts of a 10-count indictment.<sup>1</sup> Counts one, three, five, and seven alleged that on four separate occasions, appellee, while he was a Senator and a member of the Senate Committee on Post Office and Civil Service,

"directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity . . . in violation of Sections 201 (c)(1) and 2, Title 18, United States Code."<sup>2</sup>

<sup>1</sup> The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U. S. C. § 201 (b).

<sup>2</sup> 18 U. S. C. § 201 (c)(1) provides "Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives,

17-8, 14, 25-6, 27  
+ sty list.c

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-45

From: The Clerk of the Court

Circulated: \_\_\_\_\_

Recirculated: JUN 26

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[June —, 1972]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This direct appeal from the District Court presents the question whether a Member of Congress may be prosecuted under 18 U. S. C. §§ 201 (c)(1), 201 (g), for accepting a bribe in exchange for a promise relating to an official act. Appellee, a former United States Senator, was charged with five counts of a 10-count indictment.<sup>1</sup> Counts one, three, five, and seven alleged that on four separate occasions, appellee, while he was a Senator and a member of the Senate Committee on Post Office and Civil Service,

“directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive [sums] . . . in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity . . . in violation of Sections 201 (c)(1) and 2, Title 18, United States Code.”<sup>2</sup>

<sup>1</sup> The remaining five counts charged the alleged bribers with offering and giving bribes in violation of 18 U. S. C. § 201 (b).

<sup>2</sup> 18 U. S. C. § 201 (c)(1) provides: “Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives,

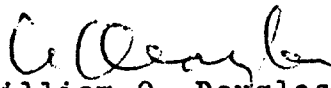
SM  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 20, 1971

Dear Bill:

In No. 70-45 - United States v.  
Brewster, please join me in your  
dissent.

  
William O. Douglas

Mr. Justice Brennan

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 5, 1972

Dear Byron:

In No. 70-45 - U. S. v. Brewster,  
please join me in your dissent.

*W. O. D.*  
W. O. D.

Mr. Justice White

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

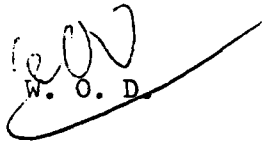
B  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 8, 1972

Dear Bill:

In No. 70-45 - U. S. v. Brewster, please  
join me in your opinion.

  
W. O. D.

Mr. Justice Brennan

cc: Conference

To: The Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
✓ Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-45

12-20-71

Re: [illegible]

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[December —, 1971]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that this prosecution will not infringe the prohibition of the Speech or Debate Clause so long as the Government, at trial, (1) limits its case on counts 1, 3, 5 and 7 to evidence concerning Senator Brewster's "taking or agreeing to take money for a promise to vote in a certain way," and avoids inquiry "into how appellee spoke, how he debated or even how he voted," and also into whether "appellee fulfilled the illegal bargain," *supra*, p. 10, and (2) limits its case on count 9 to evidence "that appellee received or agreed to receive money knowing that the donor was paying him compensation for an official act," and avoids inquiry "into the act itself," *supra*, p. 12. The Court summarizes: "If an indictment does not depend on such inadmissible evidence and if evidence of legislative acts or motivation is not introduced, the Speech or Debate Clause is not contravened regardless of whether the statute is narrowly drawn or of general application." *Supra*, p. 10. In other words, the Court holds that misconduct defined by such limited proofs may be made the subject of judicial inquiry without violating the prohibitions of the Speech or Debate Clause.

With all respect, I dissent. Today's decision repudiates principles governing the interpretation of the Speech or Debate Clause developed over the past century in a line of cases culminating in *United States v. Johnson*, 383 U. S. 169 (1966). Those principles give a broad reach to the Clause, not for the benefit of the Members of

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPT. OF JUSTICE

Page 1.

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

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 70-45

Circulated: \_\_\_\_\_

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

Recirculated: 12-21-71

[January —, 1972]

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

The Court holds that this prosecution will not infringe the prohibition of the Speech or Debate Clause so long as the Government, at trial, (1) limits its case on counts 1, 3, 5 and 7 to evidence concerning Senator Brewster's "taking or agreeing to take money for a promise to vote in a certain way," and avoids inquiry "into how appellee spoke, how he debated or even how he voted," and also into whether "appellee fulfilled the illegal bargain," *supra*, p. 10, and (2) limits its case on count 9 to evidence "that appellee received or agreed to receive money knowing that the donor was paying him compensation for an official act," and avoids inquiry "into the act itself," *supra*, p. 12. The Court summarizes: "If an indictment does not depend on such inadmissible evidence and if evidence of legislative acts or motivation is not introduced, the Speech or Debate Clause is not contravened regardless of whether the statute is narrowly drawn or of general application." *Supra*, p. 10. In other words, the Court holds that misconduct defined by such limited proofs may be made the subject of judicial inquiry without violating the prohibitions of the Speech or Debate Clause.

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE

To: The Chief Justice  
Mr. Justice Douglas  
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

Author: Brennan, J.

No. 70-45

Circulated: \_\_\_\_\_

United States, Appellant, } On Appeal from the United States District Court for  
v. } the District of Columbia  
Daniel B. Brewster. } Circuit.

Recirculated: 1/20/72

[January —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE join, dissenting.

The Court holds that this prosecution will not infringe the prohibition of the Speech or Debate Clause so long as the Government, at trial, (1) limits its case on counts 1, 3, 5 and 7 to evidence concerning Senator Brewster's "taking or agreeing to take money for a promise to vote in a certain way," and avoids inquiry "into how appellee spoke, how he debated or even how he voted," and also into whether "appellee fulfilled the illegal bargain," *supra*, p. 10, and (2) limits its case on count 9 to evidence "that appellee received or agreed to receive money knowing that the donor was paying him compensation for an official act," and avoids inquiry "into the act itself," *supra*, p. 12. The Court summarizes: "If an indictment does not depend on such inadmissible evidence and if evidence of legislative acts or motivation is not introduced, the Speech or Debate Clause is not contravened regardless of whether the statute is narrowly drawn or of general application." *Supra*, p. 10. In other words, the Court holds that misconduct defined by such limited proofs may be made the subject of judicial inquiry without violating the prohibitions of the Speech or Debate Clause.

With all respect, I dissent. Today's decision repudiates principles governing the interpretation of the Speech or Debate Clause developed over the past century in a line of cases culminating in *United States v. Johnson*, 383 U. S. 169 (1966). Those principles give a broad reach to the Clause, not for the benefit of the Members of

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPT. OF JUSTICE



Change Throughout

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-45

Circulated 6-8-72

Recirculated

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[June —, 1972]

MR. JUSTICE BRENNAN, dissenting.

When this case first came before the Court, I had thought it presented a single, well-defined issue—that is, whether the Congress could authorize by a narrowly drawn statute the prosecution of a Senator or Representative for conduct otherwise immune from prosecution under the Speech or Debate Clause of the Constitution. Counts 1, 3, 5, and 7 of the indictment charged Senator Brewster with receiving \$19,000 “in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity [as a member of the Senate Post Office Committee].” Count 9 charged the Senator with receipt of another \$5,000 for acts already performed by him with respect to his “action, vote, and decision” on that legislation. These charges, it seemed to me, fell within the clear prohibition of the Speech or Debate Clause as interpreted by decisions of this Court, particularly *United States v. Johnson*, 383 U. S. 169 (1966). For if the indictment did not call into question the “speeches or debates” of the Senator, it certainly laid open to scrutiny the motives for his legislative acts; and those motives, I had supposed, were no more subject to Executive and Judicial inquiry than the acts

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U. S. DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
DIVISION OF CONGRESS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. June 14, 1972

RE: No. 70-45 - United States v. Brewster

Dear Byron:

Will you please join me in your dissent  
in the above.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

28 /

U 121 Change Throughout p. 1

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: \_\_\_\_\_

No. 70-45

Recirculated: 6/15/72

United States, Appellant. } On Appeal from the United  
v. } States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[June —, 1972]

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

When this case first came before the Court, I had thought it presented a single, well-defined issue—that is, whether the Congress could authorize by a narrowly drawn statute the prosecution of a Senator or Representative for conduct otherwise immune from prosecution under the Speech or Debate Clause of the Constitution. Counts 1, 3, 5, and 7 of the indictment charged Senator Brewster with receiving \$19,000 “in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity [as a member of the Senate Post Office Committee].” Count 9 charged the Senator with receipt of another \$5,000 for acts already performed by him with respect to his “action, vote, and decision” on that legislation. These charges, it seemed to me, fell within the clear prohibition of the Speech or Debate Clause as interpreted by decisions of this Court, particularly *United States v. Johnson*, 383 U. S. 169 (1966). For if the indictment did not call into question the “speeches or debates” of the Senator, it certainly laid open to scrutiny the motives for his legislative acts; and those motives, I had supposed, were no more subject to Executive and Judicial inquiry than the acts

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 1, 1971

No. 70-45 - U. S. v. Brewster

Dear Chief,

Although you do not "propose action" on your draft opinion in this case, this is simply to say that I agree with it and am ready to join it. It is an important case, but my view is that it should be set for reargument only if, with the Court as presently constituted, there is not agreement upon a majority opinion.

Sincerely yours,

P.S.  
✓

The Chief Justice

Copies to the Conference

Dear Chief:

I, too, am ready to join your opinion in this case and see no reason to hold it up unless we split 3 1/2 to 3 1/2.

WJ

38  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1972

70-45 - U.S. v. Brewster

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPTS

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES <sup>White, J.</sup>

No. 70-45

Circulated: 1-26-72

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

United States, Appellant. } On Appeal from the United  
v. States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[January —, 1972]

MR. JUSTICE WHITE, dissenting.

The question presented by this case is not whether bribery or other offensive conduct on the part of Members of Congress must or should go unpunished. No one suggests that the Speech or Debate Clause insulates Senators and Congressmen from accountability for their misdeeds. Indeed, the clause itself is but one of several constitutional provisions which makes clear that Congress has broad powers to punish its Members. The sole issue here is in what forum the accounting must take place—whether the prosecution which the Government proposes is consistent with the command that “for any Speech or Debate in either House, they (members of Congress) shall not be questioned in any other Place.” U. S. Constitution, Art. I, § 6, cl. 2.

The majority disposes of this issue by distinguishing between promise and performance. Even if a Senator or Congressman may not be prosecuted for a corrupt legislative act, the Speech or Debate Clause does not prohibit prosecution for a corrupt promise to perform that act. If a Member of Congress promises to vote for or against a bill in return for money, casts his vote in accordance with the promise and accepts payment, the majority’s view is that even though he may not be prosecuted for voting as he did, although the vote was corrupt, the executive may prosecute and the judiciary

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSSNCNOC OF CONG ADV L IN

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Author: White, J.

No. 70-45

Circulated: \_\_\_\_\_

Recirculated: 1-22-72

United States, Appellant, } On Appeal from the United  
v. States District Court for  
Daniel B. Brewster. } the District of Columbia  
Circuit.

[January —, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, dissenting.

The question presented by this case is not whether bribery or other offensive conduct on the part of Members of Congress must or should go unpunished. No one suggests that the Speech or Debate Clause insulates Senators and Congressmen from accountability for their misdeeds. Indeed, the clause itself is but one of several constitutional provisions which makes clear that Congress has broad powers to try and punish its Members:

“the Constitution expressly empowers each House to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

“So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

“Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases;

9  
pp  
to be reviewed

*B*  
*M*  
*Your friend, Chief*

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

From: White, J.

Circulated: 6-2-72

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

No. 70-45 United States, Appellant

v.

Daniel B. Brewster.

Mr. Justice White, dissenting.

The question presented by this case is not whether bribery or other offensive conduct on the part of members of Congress must or should go unpunished. No one suggests that the Speech or Debate Clause insulates Senators and Congressmen from accountability for their misdeeds. Indeed, the clause itself is but one of several constitutional provisions which makes clear that Congress has broad powers to try and punish its members:

"the Constitution expressly empowers each House to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

"So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

"Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers; subject to the usual rights of witnesses in such cases;

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U.S. DEPARTMENT OF JUSTICE



1  
STYLISTIC CHANGES THROUGHOUT.

~~SEE PAGES:~~

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-45

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

From: White, J.

Circulated: \_\_\_\_\_

United States, Appellant.

v.

Daniel B. Brewster.

On Appeal from the United  
States District Court for  
the District of Columbia  
Circuit.

Recirculated: 6-9-72

[June —, 1972]

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

The question presented by this case is not whether bribery or other offensive conduct on the part of Members of Congress must or should go unpunished. No one suggests that the Speech or Debate Clause insulates Senators and Congressmen from accountability for their misdeeds. Indeed, the clause itself is but one of several constitutional provisions which makes clear that Congress has broad powers to try and punish its Members:

“the Constitution expressly empowers each House to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

“So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

“Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases;

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 1, 1971

Re: No. 70-45 - U. S. v. Brewster

Dear Chief:

I, too, am ready to join your opinion  
in this case and see no reason to hold it up  
unless we split 3 1/2 to 3 1/2.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 17, 1971

Re: No. 70-45 - United States v. Brewster

Dear Chief:

I am in general agreement with your  
draft of November 30.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

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U.S. DEPT. OF JUSTICE

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 31, 1972

Re: No. 70-45 - United States v. Brewster

Dear Chief:

Please join me.

Sincerely,

  
T.M.

The Chief Justice

cc: Conference

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SECRETARY OF JUSTICE

74  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 16, 1971

Re: No. 70-45 - United States v. Brewster

Dear Chief:

I would be willing to join an opinion written  
along the lines of your work draft circulated November 30.

Sincerely,

H. A. B.  
—

The Chief Justice

cc: The Conference

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SECTION OF ADVISORY

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1972

Re: No. 70-45 - U.S. v. Brewster

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

10  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 6, 1972

Re: No. 70-45 United States v. Brewster

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

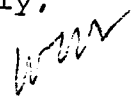
CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 8, 1972

Re: No. 70-45 - U. S. v. Brewster

Dear Chief:

Please join me.

Sincerely,  


The Chief Justice

Copies to the Conference