

# The Burger Court Opinion Writing Database

## *Board of Regents of the University of Texas System v. New Left Education Project*

404 U.S. 541 (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

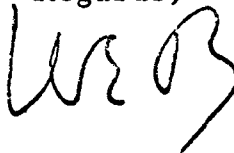
January 21, 1972

Re: No. 70-55 - Board of Regents of the University  
of Texas System v. New Left Education Project

Dear Byron:

Please join me.

Regards,



Mr. Justice White

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-55

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

Board of Regents of the Uni-  
versity of Texas System,  
Appellant.  
v.  
New Left Education Project  
et al.

On Appeal from the  
United States District  
Court for the Western  
District of Texas.

11/12/72

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

When I authored *Moody v. Flowers*, 387 U. S. 97, I thought I was writing a chapter on federalism within a State. Cities, counties, and the State as a whole constitute that federalism. The three-judge court statute, 28 U. S. C. § 2281, speaks of "the enforcement, operation or execution of any State statute." A city ordinance or a county regulation does not meet that requirement and so the county regulations involved in *Moody* did not satisfy the statute though authorized by the State. If the source of the authority is state action, the statute is presumably satisfied, since normally, of course, state laws have an impact on activities in every city and every county. But where a state law is not of "statewide concern" but involves only "legislation affecting a locality" (*Rouck v. Commissioners*, 307 U. S. 208, 213), then the policy of 28 U. S. C. § 2281 is deemed not served.

But a State's university system, involving, as does this one, 17 institutions, is plainly of "state-wide concern" even though not every county has a university. The matter involves more than state "legislation affecting a

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES Douglas, J.

No. 70-55

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Board of Regents of the Uni-  
versity of Texas System,  
Appellant.  
v.  
New Left Education Project  
et al.

On Appeal from the  
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[January —, 1972]

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<sup>1</sup> During oral argument, counsel for appellants indicated that their authority extended over some "17 component institutions in the system," stretching from El Paso on the far western tip of the State.

For 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

No. 70-55

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

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Board of Regents of the Uni-  
versity of Texas System,  
Appellant.  
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et al.

On Appeal from the  
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[January —, 1972]

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2 3  
You joined B.R.N.

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-55

Board of Regents of the Uni-  
versity of Texas System,  
Appellant,  
v.  
New Left Education Project  
et al.

On Appeal from the  
United States District  
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[January —, 1972]

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Justice  
Justice Brennan  
Justice Burger  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist

glas. J.

1/20/72 ✓

2/2

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-55

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

From: [illegible]

Board of Regents of the Uni-  
versity of Texas System,  
Appellant,  
v.  
New Left Education Project  
et al.

On Appeal from the,  
United States District  
Court for the Western  
District of Texas.

1/21/72 ✓

[January 24, 1972]

MR. JUSTICE DOUGLAS, dissenting.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 11, 1972

RE: No. 70-55 - Board of Regents of the  
University of Texas System v. New  
Left Education Project, et al.

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 11, 1972

70-55, Board of Regents v.  
New Left Education Project

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

60 —  
*Please join me*  
*M*

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

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1-11-72

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No. 70-55

Board of Regents of the Uni- versity of Texas System, Appellant, v. New Left Education Project et al.	}	On Appeal from the United States District Court for the Western District of Texas.
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[January —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case comes here on direct appeal from the ruling of a three-judge court declaring unconstitutional and enjoining enforcement of two sections of the Rules and Regulations of appellant Board of Regents of the University of Texas System. A-69-CA-106 (WD Texas, Sept. 9, 1970). We postponed consideration of our jurisdiction to a hearing on the merits. 401 U. S. 935 (1971). For reasons explained below, we have concluded that we lack jurisdiction of this appeal.

This litigation began when the Board of Regents sued the New Left Educational Project and certain individuals in a Texas court. In that suit, the Regents sought to restrain defendants from distributing a newspaper and making either commercial or noncommercial solicitations on the Austin campus of the University of Texas except in compliance with appellant's rules. Defendants countered by bringing this federal suit to enjoin further state court proceedings on the ground that the rules which the Regents sought to enforce abridged defendants' First Amendment rights. A three-judge court met and de-

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B  
You joined  
pg 5, 4

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.

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

Recirculated: 1-18-72

No. 70-55

Board of Regents of the Uni- versity of Texas System, Appellant, v. New Left Education Project et al.	}	On Appeal from the United States District Court for the Western District of Texas.
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[January —, 1972]

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 18, 1972

Re: No. 70-55 - Board of Regents v. New Left Education

Dear Byron:

Please join me.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 13, 1972

Re: No. 70-55 - Board of Regents v. New Left  
Education Project

Dear Byron:

I agree.

Sincerely,

*H.A.B.*

Mr. Justice White

cc: The Conference