

# The Burger Court Opinion Writing Database

*Roudebush v. Hartke*

405 U.S. 15 (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

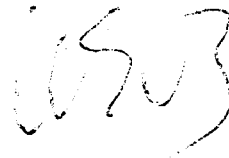
February 18, 1972

Re: No. 70-66 - Roudebush v. Hartke  
No. 70-67 - Sendak v. Hartke

Dear Potter:

Please join me.

Regards,



Mr. Justice Stewart

cc: The Conference

B —  
6 incl. 4 on voted  
to reversal.

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

No. 70-66 AND 70-67

From: Douglas, J.

Circulated: 1-3/

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

Richard L. Roudebush,  
Appellant,

70-66 v.

R. Vance Hartke et al.

Theodore L. Sendak,  
Attorney General of  
Indiana, Appellant,

70-67 v.

R. Vance Hartke et al.]

On Appeal from the United  
States District Court, South-  
ern District of Indiana.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

While I agree with the Court that the case is not moot and that the three-judge court was not barred from issuing an injunction, I disagree on the merits.

By virtue of Art. I, § 5, Senate custom, and this Court's prior holdings, the Senate has exclusive authority to settle a recount contest once the contestee has been certified and seated, albeit conditionally.

Article I, § 5, provides "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." To implement this authority, the Senate has established a custom of resolving disagreements over which of two or more candidates in a senatorial race attracted more ballots. The apparent loser may initiate the process by filing with the Senate a petition stating (a) what voting irregularities he suspects, and (b) how many votes were affected. Upon receipt of such a petition, a special committee may be authorized to investigate the charges alleged. If the allegations are not frivolous and would be sufficient, if true, to alter the apparent outcome of the election, actual ballots may be

change throughout

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  
Mr. Justice Douglas, J.

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-66 AND 70-67

Richard L. Roudebush,  
Appellant,

70-66 v.

R. Vance Hartke et al.

Theodore L. Sendak,  
Attorney General of  
Indiana, Appellant,

70-67 v.

R. Vance Hartke et al.]

On Appeal from the United  
States District Court, South-  
ern District of Indiana.

2/1/72

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

While I agree with the Court that the case is not moot and that the three-judge court was not barred by 28 U. S. C. § 2283 from issuing an injunction, I disagree on the merits.

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B  
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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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 70-66 AND 70-67

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

Recirculated: 2-1

Richard L. Roudebush,  
Appellant,

70-66 v.

R. Vance Hartke et al.

Theodore L. Sendak,  
Attorney General of  
Indiana, Appellant,

70-67 v.

R. Vance Hartke et al.

On Appeal from the United  
States District Court, South-  
ern District of Indiana.

[January —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting in part.

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*G*  
*My*  
*You joined PB of*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 1, 1972

RE: Nos. 70-66 & 70-67 - Roudebush and  
Sendak v. Hartke, et al.

Dear Bill:

Please join me in your most persuasive  
dissent in the above.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference

3

*Please join me*  
*M*

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

2nd DRAFT

From: Stewart, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: JAN 31 1972

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

No. 70-66 AND 70-67

Richard L. Roudebush,  
Appellant,  
70-66 v.  
R. Vance Hartke et al.  
  
Theodore L. Sendak,  
Attorney General of  
Indiana, Appellant,  
70-67 v.  
R. Vance Hartke et al.

On Appeal from the United  
States District Court, South-  
ern District of Indiana.

[February —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

The 1970 election for the office of United States Senator was the closest in Indiana history. The incumbent, Senator R. Vance Hartke (Hartke), was declared the winner by a plurality of 4,383 votes—a margin of approximately one vote per state precinct. On November 16, 1970, 13 days after the election, the Indiana Secretary of State certified to the Governor that Hartke had been re-elected. On the following day, candidate Richard L. Roudebush (Roudebush) filed in the Superior Court of Marion County a timely petition for a recount.<sup>1</sup> Hartke moved in that court to dismiss the petition, arguing that the state recount procedure conflicted with the Indiana and Federal Constitutions.

<sup>1</sup> Roudebush filed similar petitions in 10 other counties. Recounts in all 11 counties have been postponed, pending the outcome of this case.

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p. 6

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

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

No. 70-66 AND 70-67

Recirculated: **FEB 18 1972**

Richard L. Roudebush,  
Appellant,

70-66 v.

R. Vance Hartke et al.

Theodore L. Sendak,  
Attorney General of  
Indiana, Appellant,

70-67 v.

R. Vance Hartke et al.

On Appeal from the United  
States District Court, South-  
ern District of Indiana.

[February —, 1972]

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<sup>1</sup> Roudebush filed similar petitions in 10 other counties. Recounts in all 11 counties have been postponed, pending the outcome of this case.



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 3, 1972

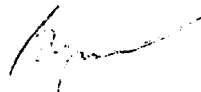
Re: Nos. 70-66 & 70-67 - Roudebush  
v. Hartke

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Dear Potter:

Join me please.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

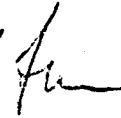
February 1, 1972

Re: No. 70-66 and 70-67 - Roudebush v. Hartke, etc.

Dear Potter:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 3, 1972

Re: No. 70-66 - Roudebush v. Hartke  
No. 70-67 - Sendak v. Hartke

Dear Potter:

Please join me.

Sincerely,

*H. A. B.*  
—

Mr. Justice Stewart

cc: The Conference