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Rosario v. Rockefeller

410 U.S. 752 (1973)

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

May 29, 1972

Re: No. 71-1371 - Rosario v. Rockefeller

MEMORANDUM TO THE CONFERENCE:

Byron White's memorandum makes a fourth vote (to grant cert) in the above case, which alters the situation substantially. As a result of this Thurgood has sent a message through Bill Brennan asking that it not go on the Order List Tuesday. Meanwhile Bill Rehnquist and I have been collaborating on a dissent and would have it complete before five o'clock today.

Thurgood's point -- and it is an important one -- is the posture of the case in view of the granting of cert and requests that a conference be held immediately after the Tuesday sitting in order to consider what action should be taken, if any.

Regards,

WEB

WB

May 29, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1371 - Rosario v. Rockefeller

I am changing my vote in this case to note probable jurisdiction and hear argument. Unless one of the other three who voted this way changes his mind, my vote makes the fourth to hear argument rather than to decide the merits summarily.

B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 26, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. A-1126 (71-1371) - Rosario v. Rockefeller
Application for stay pending cert. to CA2

The attached memorandum which we have prepared in this case might be of interest in considering the application which has been referred by me to the full Court.

T.M.

Attachment

LFP

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 26, 1972

Petrs - Reg - Dec 1971
Cant Vote until Nov 1972

No. A-1126 (71-1371)

Rosario v. Rockefeller - Application for stay pending cert. to CA2

Petitioners challenge the provision of New York's election law that bars them from voting in the N. Y. presidential primary on June 20, 1972. That provision defers every registration, for primary purposes only, until after the next general election. Thus petitioners, who registered to vote for the first time in December 1971, will not be eligible to vote in a primary until after November 1972. They claim this statute bears a heavy burden of justification, since it curtails the right to vote, and that it is not narrowly tailored to serve a compelling state interest, citing Dunn v. Blumstein. They also claim it is in effect a durational residence requirement, with respect to those people who move into the state after a general election and before a primary -- those people must wait out the prescribed time (i.e., until after the next general election) before becoming eligible to vote in a primary. (But it does not appear that any of the petitioners is in this category--it seems, though it is not clear, that petitioners all belong to the class of people who were in fact eligible to register in October, i.e., before the last general election, but who simply and inadvertently failed to do so.)

The DC agreed with petitioner and issued a declaratory judgment striking the statute as unconstitutional. The CA2 (Lumbard, Mansfield, Mulligan) reversed. Petitioners have filed their Petition for Writ of Certiorari and seek a stay of the mandate pending cert.

On the merits, petitioners have a substantial claim. The only interest advanced by the state is the prevention of cross-over fraud in the primaries -- the idea is that people have to declare their party affiliation for primary purposes

before the primary or the general election has gathered steam -- indeed, they have to declare their party affiliation prior to the next previous general election, which does not at all involve the issues presented by the primary and its associated general election. No doubt that is a valid state interest. But that interest is not at all served by a requirement that governs not only cross-overs, i.e., changes in party affiliation, but also initial registrations, like petitioners'. As applied to first-time voters, the statute simply means all new voters have to sit out one primary. The statute thus curtails the right of those new voters to vote in primaries, for no apparent state interest at all.

If the Court acts on the cert. petition before June 20, then the matter of the stay is unimportant; otherwise, of course, it is critical, and should be granted (perhaps with some special provision for keeping segregated the votes of the voters whose eligibility is in question).

May 29, 1972

MEMORANDUM TO THE CONFERENCE

Re: 71-1371 - Rosario v. Rockefeller

Although it is probably implicit from our discussion at Conference this morning, in view of Byron's change of his vote in this case I would now vote to grant certiorari and hear argument on the merits, rather than voting to deny certiorari.

Sincerely,

/s/ William H. Rehnquist