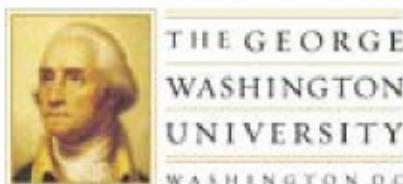


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Lippitt v. Cipollone

404 U.S. 1032 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



1st DRAFT

SUPREME COURT OF THE UNITED STATES

THOMAS W. LIPPITT v. JOSEPH A.
CIPOLLONE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

No. 71-5729. Decided January —, 1972

MR. JUSTICE DOUGLAS, dissenting.

In the 1970 Ohio primary election, appellant voted as a Republican and was a candidate for the Republican nomination to the House of Representatives from the 22d Congressional District of Ohio. Political allegiances change and, in the upcoming election, appellant seeks the nomination to Congress of the American Independence Party. He is prevented from pursuing this nomination, however, by an intricate statutory scheme. Central to this scheme is a statute which provides, with various exceptions not relevant here, *e. g.*, Ohio Rev. Code § 3517.013 *et seq.* (Page Supp. 1970), that “[n]o person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the next preceding four calendar years.” Ohio Rev. Code § 3513.191 (Page 1960). Other provisions also being attacked require those working for primary candidates or signing their nominating petitions to be members of the party in which nomination is sought, *id.*, § 3513.05.

No one disputes that Ohio's statutory scheme prevents appellant from seeking the nomination of the party of his choice before 1974. Appellees, however, defend this limitation of freedom, saying that it is necessary to ensure “the formation of recognizable, relatively stable political parties with their own leadership, goals and philosophies.” They conclude, “The protection of these

2nd DRAFT

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SUPREME COURT OF THE UNITED STATES

THOMAS W. LIPPITT *v.* JOSEPH A.
CIPOLLONE ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO

No. 71-5729. Decided January 17, 1972

The judgment is affirmed.

MR. JUSTICE DOUGLAS, dissenting.

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 13, 1972

5729

Re: No. 71-5129 - Lippitt v.
Cipollone

Dear Bill:

Please add at the foot of
your opinion:

Mr. Justice White
would also note probable
jurisdiction and set the
case for oral argument.

Sincerely,



Mr. Justice Douglas

Copies to Conference



January 15, 1972

Re: No. 71-5729 - Lippitt v. Cipollone

Dear Bill:

In place of the reference at the foot of your opinion in this case to what Brother Brennan and I would do, please substitute the following:

Mr. Justice Brennan, Mr. Justice White
and Mr. Justice Powell:

We are three of the four who dissent from the affirmance of the judgment of the District Court in this case. In the circumstances present here, however, we do not insist that the case be set down for oral argument.

Sincerely,

B.R.W.

Mr. Justice Douglas

Copies to Conference