The Burger Court Opinion Writing Database

Sugarman v. Dougall

413 U.S. 634 (1973)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

January 22, 1973

Re: No. 71-1222 - Sugarman v. Dougall

Dear Bill:

I vote to affirm and will assign to Harry.

Regards,

WEB

Mr. Justice Douglas

cc: Mr. Justice Blackmun

WJD

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

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1973

Re: No. 71-1222 - Sugarman v. Dougall

Dear Harry:

I am now satisfied that the narrow basis of your opinion permits me to join it, as I am unable to do with Lewis Powell's Griffith. His case cannot be "narrowly" written. I am therefore sorting out a dissent that previously was addressed to both.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 13, 1973

Dear Harry:

Please join me in your opinion in 71-1222, Sugarman v. McL. Dougall.

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1973

RE: No. 71-1222 Sugarman v. Dougall

Dear Harry:

I am happy to join your opinion in the above.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 16, 1973

71-1222, Sugarman v. Dougall

Dear Harry,

Thanks for so promptly responding to my suggestion. Either one of the alternatives you propose would be quite satisfactory from my point of view. I suggest, therefore, that you adopt the one you prefer.

Sincerely yours,

P.S.

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 16, 1973

Re: No. 71-1222, Sugarman v. Dougall

Dear Harry,

I am in basic agreement with your memorandum, and would join it as a Court opinion, with one reservation:

> The Equal Protection Clause confers no substantive constitutional rights or liberties--with the exception of the right to vote on an equal basis with other qualified voters articulated in recent cases. This provision of the Constitution, rather, is concerned with classifications. Accordingly, I could not join the first paragraph of Part III that implies that the Equal Protection Clause confers the "right to work for a living . . . " My understanding of the paragraph in the Hughes opinion from which the quotation is taken is that it was the purpose of the entire Fourteenth Amendment to secure this right--that purpose being to obliterate all vestiges of the legacy of slavery.
>
> The present case would be the same, I think, if New York law provided that the 60 mile an hour speed limit should apply only to alien automobile drivers. Yet surely there is no constitutional right to drive one's car at an excessive speed.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

B

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 26, 1973

Re: No. 71-1222, Sugarman v. Dougall

Dear Harry,

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

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1973

Re: No. 71-1222 - Sugarman v. Dougall

Dear Harry:

Having given further consideration to this case on which I abstained in conference and being further persuaded by your memorandum, with its reservations, I would, as presently advised, join an opinion along the lines you propose.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1973

Re: No. 71-1222 - Sugarman v. Dougall

Dear Harry:

Please join me.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: Conference

pp. 5, 7, 13

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

From: Blackmun, J.

1st DRAFT

Circulated: 4/13/73

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 71-1222

Jule M. Sugarman, Etc., et al., Appellants, *v.* Patrick McL. Dougall et al.	On Appeal from the United States District Court for the Southern District of New York.

[April —, 1973]

MR. JUSTICE BLACKMUN, memorandum.

Section 53 (1) of the New York Civil Service Law reads:

> "Except as herein otherwise provided, no person shall be eligible for appointment for any position in the competitive class unless he is a citizen of the United States." [1]

[1] The restriction has its statutory source in Laws of New York, 1939, c. 767, § 1. We are advised that the legislation was declarative of an administrative practice that had existed for many years. Tr. of Oral Arg. 43, 45.

Section 53 (2) makes a temporary exception to the citizenship requirement:

"2. Notwithstanding any of the provisions of this chapter or of any other law, whenever a department head or appointing authority deems that an acute shortage of employees exists in any particular class or classes of positions by reason of a lack of a sufficient number of qualified personnel available for recruitment, he may present evidence thereof to the state or municipal civil service commission having jurisdiction which, after due inquiry, may determine the existence of such shortage and waive the citizenship requirement for appointment to such class or classes of positions. The state commission or such municipal commission, as the case may be, shall annually review each such waiver of the citizenship requirement.

April 16, 1973

Re: No. 71-1222 - Sugarman v. Dougall

Dear Potter:

Thanks for your note of this morning. I think we can straighten out the difficulty. One way is to eliminate the second sentence of the first paragraph of Part III on page 7. Another alternative, and the one I believe I prefer, would be to make that sentence read:

> "This protection extends, specifically, in the words of Mr. Justice Hughes, to aliens who 'work for a living in the common occupations of the community.' Truax v. Raich, 239 U.S., at 41."

Would either of these be satisfactory to you?

Sincerely,

HAB

Mr. Justice Stewart

B —

pp. 7, 14, and STYLISTIC CHANGES

Please join me

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

From: Blackmun, J.

Circulated: _____

Recirculated: 4/17/73

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1222

Jule M. Sugarman, Etc., et al., Appellants, *v.* Patrick McL. Dougall et al.	On Appeal from the United States District Court for the Southern District of New York.

[April —, 1973]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Section 53 (1) of the New York Civil Service Law reads:

> "Except as herein otherwise provided, no person shall be eligible for appointment for any position in the competitive class unless he is a citizen of the United States." [1]

[1] The restriction has its statutory source in Laws of New York, 1939, c. 767, § 1. We are advised that the legislation was declarative of an administrative practice that had existed for many years. Tr. of Oral Arg. 43, 45.

Section 53 (2) makes a temporary exception to the citizenship requirement:

"2. Notwithstanding any of the provisions of this chapter or of any other law, whenever a department head or appointing authority deems that an acute shortage of employees exists in any particular class or classes of positions by reason of a lack of a sufficient number of qualified personnel available for recruitment, he may present evidence thereof to the state or municipal civil service commission having jurisdiction which, after due inquiry, may determine the existence of such shortage and waive the citizenship requirement for appointment to such class or classes of positions. The state commission or such municipal commission, as the case may be, shall annually review each such waiver of the citizenship requirement,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1973

MEMORANDUM TO THE CONFERENCE

Case Held for No. 71-1222 - Sugarman v. Dougall

There is one case held for Sugarman. It is No. 72-1360, Nelson v. Miranda. The appellees instituted the suit challenging Art. 18, § 10 of the Arizona Constitution and § 38-201B of the Arizona Revised Statutes. The State's Constitution provides that, with certain narrow exceptions relating to prisoners and teaching programs under Federal Teacher Exchange statutes, "No person not a citizen or ward of the United States shall be employed upon or in connection with any state, county or municipal works or employment." The implementing statute further provides that "No person is eligible to any office, employment or service in any public institution in the state, or in any of the several counties thereof, of any kind or character, whether by election, appointment or contract, unless he is a citizen of the United States . . . . " The statute contains an exception, as does the constitutional provision, for Federal Teacher Exchange programs. In addition, neither the Constitution nor the statute seems to apply to university or college faculty members.

The three-judge district court held the state provisions unconstitutional and enjoined their enforcement. The state is appealing.

The case seems to me to be squarely controlled by Sugarman. I see no abstention problem. Inasmuch as injunctive relief was granted, appellate jurisdiction is clearly apparent.

WB

Two further details deserve mention. First, both plaintiffs were denied employment solely because of non-citizenship. One, a 28 year old British girl holding a permanent visa and a resident of Arizona since November 1970 and of the United States since 1968, was denied employment as a social service worker or as a teacher. The other, an 18 year old girl who had resided in Arizona for more than 15 years, was accepted for employment and began to work as an office clerk at a high school where she was also enrolled as a student. Her work was terminated solely because of alienage. Second, the district court quoted from Judge Lumbard's concurring opinion in Sugarman and expressly incorporated his view in its opinion. Our proposed opinion makes a bow in the same direction.

Finally, it should perhaps be noted that no motion to dismiss or affirm has been called for or received in this case. I feel, however, that this should not be a bar to a summary affirmance, inasmuch as an affirmance would constitute the very relief for which a motion to affirm would argue.

As is apparent in the foregoing, I shall vote to affirm.

H.A.B.

WR

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1973

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 71-1222 - Sugarman v. Dougall

In my memorandum of this morning it was stated that no motion to dismiss or affirm has been received. I am now advised by the Clerk's office that a motion to affirm is, indeed, on file. A copy had never been distributed to me. It adds nothing, but at least eliminates any concern we might have had because of its absence.

H.A.B.

WB

WD

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 16, 1973

Re: 71-1222 Sugarman v. Dougall

Dear Harry:

Please join me in your opinion.

I have noted Potter's letter and would be quite content with the change which he suggests.

Sincerely,

Lewis

Mr. Justice Blackmun

cc: The Conference

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

2nd DRAFT

Mr. Justice Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5/9/73

Nos. 71–1222 AND 71–1336

Recirculated:

Jule M. Sugarman, Etc., et al., Appellants, 71–1222 *v.* Patrick McL. Dougall et al. | On Appeal from the United States District Court for the Southern District of New York.

In re Application of Fre Le Poole Griffiths for Admission to the Bar, Appellant, 71–1336 | On Appeal from the Superior Court of Connecticut.

[May —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

The Court in these two cases holds that an alien is not really different from a citizen, and that any legislative classification on the basis of alienage is "inherently suspect". The Fourteenth Amendment, the Equal Protection Clause of which the Court uses to invalidate the State legislation here involved, says nothing about "inherently suspect classifications," or, for that matter, about merely "suspect classifications." The principal purpose of those who drafted and adopted the Amendment was to prohibit the States from invidiously discriminating by reason of race, *Slaughterhouse Cases*, 16 Wall. 36 (1873), and, because of this plainly manifested intent, classifications based on race have rightly been held "suspect" under the Amendment. But there is no language used in the Amendment, nor any historical evidence as to the intent of the Framers, which would suggest to the slightest degree that it was intended to render aliens a "suspect" classification, that it was designed in any way to protect "discrete and insular minorities"

stylistic changes

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 71–1222 AND 71–1336

Jule M. Sugarman, Etc., et al., Appellants, 71–1222 *v.* Patrick McL. Dougall et al.	On Appeal from the United States District Court for the Southern District of New York.
In re Application of Fre Le Poole Griffiths for Admission to the Bar, Appellant. 71–1336	On Appeal from the Superior Court of Connecticut.

[May —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

The Court in these two cases holds that an alien is not really different from a citizen, and that any legislative classification on the basis of alienage is "inherently suspect". The Fourteenth Amendment, the Equal Protection Clause of which the Court interprets as invalidating the State legislation here involved, contains no language concerning "inherently suspect classifications," or, for that matter, merely "suspect classifications." The principal purpose of those who drafted and adopted the Amendment was to prohibit the States from invidiously discriminating by reason of race, *Slaughter-house Cases*, 16 Wall. 36 (1873), and, because of this plainly manifested intent, classifications based on race have rightly been held "suspect" under the Amendment. But there is no language used in the Amendment, nor any historical evidence as to the intent of the Framers, which would suggest the slightest degree that it was intended to render alienage a "suspect" classification, that it was designed in any way to protect "discrete and insular minorities" other than racial minorities, or that it would in any