

# The Burger Court Opinion Writing Database

## *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

February 20, 1973

Re: No. 71-1371 - Pedro J. Rosario v. Nelson Rockefeller,  
Governor of the State of New York

Dear Potter:

Please join me.

Regards,

WJ

Mr. Justice Stewart

Copies to the Conference

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WB

2  
7 M


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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 4, 1973

Dear Chief:

As respects No. 71-1371, Rosario  
v. Rockefeller -- the opinion you assigned  
to Potter -- I have talked with Lewis and  
he will undertake the dissent.

  
William O. Douglas

The Chief Justice

cc: Conference  
Law Clerks

9  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 7, 1973

Dear Lewis:

Please join me in your dissent  
in 71-1371, Rosario v. Rockefeller.

*W. O. Douglas*  
William O. Douglas

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 6, 1973

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

Dear Lewis:

Please join me in your dissent in the  
above.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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: JAN 4 1973

No. 71-1371

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

Pedro J. Rosario et al., Petitioners, v. Nelson Rockefeller, Governor of the State of New York, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.
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[January —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

For more than 60 years, New York has had a closed system of primary elections, which provides that only enrolled members of a political party may vote in that party's primary.<sup>1</sup> Under the State's Election Law, a registered voter enrolls as a party member by depositing an enrollment blank in a locked enrollment box. The last day for enrollment is 30 days before the general election each year. Section 186 of the Election Law provides that the enrollment boxes shall not be opened until the Tuesday following the general election, and party affiliations are then entered on the State's official registration books. The voter is then duly enrolled as a member of his party and may vote in a subsequent primary election.<sup>2</sup>

<sup>1</sup> See N. Y. Election Law § 131. The State's first comprehensive primary law was enacted in 1911.

<sup>2</sup> Section 186 provides, in pertinent part:

"All enrollment blanks contained in the enrollment box shall remain in such box, and the box shall not be opened nor shall any of the blanks be removed therefrom until the Tuesday following

*joined L P  
dissent 2/7  
6, 7, 8*

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

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

No. 71-1371

Recirculated: MAR 8 1973

<p>Pedro J. Rosario et al., Petitioners, v. Nelson Rockefeller, Governor of the State of New York, et al.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Sec- ond Circuit.</p>
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[January —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

For more than 60 years, New York has had a closed system of primary elections, whereby only enrolled members of a political party may vote in that party's primary.<sup>1</sup> Under the State's Election Law, a registered voter enrolls as a party member by depositing an enrollment blank in a locked enrollment box. The last day for enrollment is 30 days before the general election each year. Section 186 of the Election Law provides that the enrollment boxes shall not be opened until the Tuesday following the general election, and party affiliations are then entered on the State's official registration books. The voter is then duly enrolled as a member of his party and may vote in a subsequent primary election.<sup>2</sup>

<sup>1</sup> See N. Y. Election Law § 131. The State's first comprehensive primary law was enacted in 1911.

<sup>2</sup> Section 186 provides, in pertinent part:

"All enrollment blanks contained in the enrollment box shall remain in such box, and the box shall not be opened nor shall any of the blanks be removed therefrom until the Tuesday following

3

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

Wait for  
LFP

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 10, 1973

Re: No. 71-1371 - ROSARIO v. ROCKEFELLER

Dear Potter:

Please join me.

Sincerely,



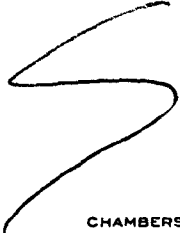
Mr. Justice Stewart

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U.S. DEPARTMENT OF JUSTICE



  
CHAMBERS OF  
JUSTICE BYRON R. WHITE

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

February 15, 1973

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

Dear Potter:


Your memorandum to Lewis in No. 71-1332, Rodriguez, suggests to me that pending further discussion I should withdraw my agreement with your opinion in Rosario and ask you merely to note that I concur in the result.

Sincerely,



Mr. Justice Stewart

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 7, 1973

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

Dear Lewis:

Please join me in your dissent.

Sincerely,

  
T.M.

Mr. Justice Powell

cc: Conference

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U.S. SUPREME COURT MANUSCRIPTS

B  
M

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 17, 1973

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

Dear Potter:

Unless Lewis persuades me mightily to the contrary,  
I am with you.

Sincerely,

H.A.B.

Mr. Justice Stewart

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U.S. SUPREME COURT RECORDS

B

*Please join me*  
*WJ*

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1371

From: Powell, J.

Circulated: **FEB 5 1973**

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

Pedro J. Rosario et al.,  
Petitioners,  
v.  
Nelson Rockefeller, Governor  
of the State of New  
York, et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[February —, 1973]

MR. JUSTICE POWELL, dissenting.

I

It is important at the outset to place New York's cut-off date for party enrollment in perspective. It prevents prospective voters from registering for a party primary some eight months before a presidential primary and 11 months before a nonpresidential one.<sup>1</sup> The Court recognizes, as it must, that the period between the enrollment and the primary election is a "lengthy" one.<sup>2</sup> Indeed, no other State has imposed upon voters previously unaffiliated with any party restrictions which even approach in severity those of New York.<sup>3</sup> And New York

<sup>1</sup> October 2, 1971, was the last day on which petitioners' enrollment could have been effective. June 20, 1972, was the date of New York's presidential primary. Thus the deadline was actually some eight and one-half months before the primary. In nonpresidential years, the cutoff runs from early October until the following September.

<sup>2</sup> Court opinion, p. 8.

<sup>3</sup> The State does not dispute this point. See Tr. of Oral Arg., p. 34. Massachusetts, Illinois, Ohio, New Jersey, and Texas permit previously unaffiliated voters to declare their initial party affiliation immediately prior to voting in the primary of their choice. See Annotated Laws of Massachusetts, c. 53, §§ 37, 38; Illinois Annotated Statutes, §§ 5-30; 7-43-7-45; New Jersey Statutes Annotated,

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SSSNCNOC 30 ADV 1 IN

PP 1,9,10.

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-1371

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

Recirculated: **FEB 8 1973**

Pedro J. Rosario et al.,  
Petitioners,  
v.  
Nelson Rockefeller, Governor  
of the State of New  
York, et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[February —, 1973]

MR. JUSTICE POWELL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join, dissenting.

I

It is important at the outset to place New York's cut-off date for party enrollment in perspective. It prevents prospective voters from registering for a party primary some eight months before a presidential primary and 11 months before a nonpresidential one.<sup>1</sup> The Court recognizes, as it must, that the period between the enrollment and the primary election is a "lengthy" one.<sup>2</sup> Indeed, no other State has imposed upon voters previously unaffiliated with any party restrictions which even approach in severity those of New York.<sup>3</sup> And New York

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WB  
WM

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3, 4, 5, 7, 8.

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-1371

Circulated:

FEB 6 1973

Recirculated:

Pedro J. Rosario et al.,  
Petitioners,  
v.  
Nelson Rockefeller, Governor  
of the State of New  
York, et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[March —, 1973]

MR. JUSTICE POWELL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join, dissenting.

I

It is important at the outset to place New York's cut-off date for party enrollment in perspective. It prevents prospective voters from registering for a party primary some eight months before a presidential primary and 11 months before a nonpresidential one.<sup>1</sup> The Court recognizes, as it must, that the period between the enrollment and the primary election is a "lengthy" one.<sup>2</sup> Indeed, no other State has imposed upon voters previously unaffiliated with any party restrictions which even approach in severity those of New York.<sup>3</sup> And New York

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<sup>2</sup> Court opinion, p. 8.

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*BM*

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 8, 1973

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

Dear Potter:

Please join me.

Sincerely,

*WHR*

Mr. Justice Stewart

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U.S. SUPREME COURT