The Burger Court Opinion Writing Database

Brown v. Chote

411 U.S. 452 (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

November 24, 1972

Re: No. 71-1583 - Brown v. Chote

MEMORANDUM TO THE CONFERENCE:

I enclose a memorandum prepared for me by Mr. Ripple.

Since this case is one not for the private interests of Mr. Chote but for a broad public interest, it should be argued by a competent lawyer and not by a layman; that decision, of course, lies entirely with the Court.

Moreover, Mr. Chote has pursued the case in forma pauperis and it seems odd that he can now afford a trip to Washington to argue. In these circumstances I suggest we pick out a good Washington, D. C. lawyer who can give us some genuine assistance, unless Bill Douglas has someone in mind from California.

Regards,

WEB

Attachment

WB

WD

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

CHAMBERS OF
THE CHIEF JUSTICE

March 5, 1973

Re: No. 71-1583 - Brown v. Chote

MEMORANDUM TO THE CONFERENCE:

Bill Douglas' memo today proposing a very narrow solution in the above case may find considerable support in the Conference even though it affirms only the interim action. My docket sheet shows five "narrow" general affirmances and one reversal. Equating these for limited purposes, it may be that this will appeal to all the "narrow" votes.

I had contemplated taking this case myself with a treatment not too far away from Bill's, i.e., to affirm on the ground that only temporary injunction was involved and that in the exigent circumstances temporary relief was not an abuse of discretion.

I find Bill's forthright treatment acceptable and will hold the assignment where I placed it, subject to reassigning it to Bill if it commands a Court. Bill now has my vote and, by reasonable inference, Bill Rehnquist's vote.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

March 6, 1973

Personal

PERSONAL TO JUSTICES

Re: No. 71-1583 - Brown v. Chote

Dear Bill:

Re your memo today, if you will read my memo carefully you will observe that I have not abandoned my original position and vote at the Conference, but I could accept Bill Douglas' approach. See the final paragraph in my March 5 memo.

I sincerely trust that you do not suggest that Bill was not entirely free to do what he has done, i.e., circulate an alternative proposal and see what the reactions are. There is all too little "collegial" exercise and I should think we ought to encourage that, not suppress it.

I repeat that if there are five votes for Bill Douglas' proposal, the point is resolved. I have already stated I can join that disposition. If Bill's disposition does not secure five votes, the case remains assigned to me as before, and I will circulate in due course, affirming.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1973

Re: No. 71-1583 - Brown v. Chote

MEMORANDUM TO THE CONFERENCE:

Bill Douglas' memorandum on this case prompted me to review again the Appendix. You may recall my position at Conference was that the record was inadequate to resolve the large constitutional question and that we should affirm on the narrow ground that given the exigent circumstances and time pressures, it was not error for the District Court to order Chote's name to be placed on the ballot. I also expressed my view that the case was not controlled by Bullock I. I began to draft a Per Curiam along these lines but suspended when Bill Douglas' memorandum of March 5 came around.

I have again reviewed the "record" (if it can be called that). It reads like something the New Yorker might conjure up as a parody on the judicial process.

For convenience in reading it, I enclose a copy of the 14 pages of the transcript.

The case came before the Court only on the return to an Order to Show Cause. The Court proceeded to dispose of the case only preliminarily and without reaching the merits.

I particularly call attention to the District Court opinion:

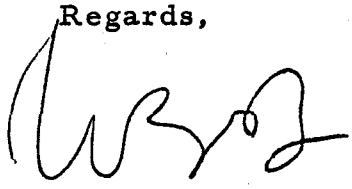
> "Since * * * plaintiff may prevail on the merits * * * absent a preliminary injunction his constitutional rights may be irreparably lost." App. p. 38.

Therefore, we have before us only the correctness of the District Court's exercise of discretion, not the merits of the underlying constitutional claim.

You may also recall that Chote, who appeared pro se in the District Court, wanted us to let him come here to argue his own case. He did not ask for counsel in the District Court or here. We appointed a lawyer to argue here.

I am more than ever persuaded that we should dispose of this case on the narrowest possible basis and wait for a case that has been properly presented. Later today, I will send around a proposed disposition.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

March 26, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Bill:

I have considered the problem you raised in your note of today's date. My conclusion was that we might have to decide the merits of the constitutional issue in one of the other cases. I do not think we have any "choice" in the above case. I think we have no power to decide a question never reached by the three-judge court.

Regards,

Mr. Justice Brennan

B

—

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

From: The Chief Justice

1st DRAFT

Circulated: MAR 26 19

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 71–1583

Edmund G. Brown, Jr., Secretary of State of California, Appellant, *v.* Raymond G. Chote. | On Appeal from the United States District Court for the Northern District of California.

[March —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This case arises under 28 U. S. C. § 1253 on direct appeal from a three-judge district court in the Northern District of California. The court was convened pursuant to 28 U. S. C. § 2281 when appellee called into question the constitutionality of those provisions of the California Elections Code which require candidates in a primary election to pay a filing fee prior to having their names listed on the primary ballot. Calif. Elections Code §§ 6552 and 6553. Under these provisions, candidates for the federal House of Representatives must pay $425 (1% of the annual salary of the office); candidates for the federal Senate must pay $850 (2% of the salary of the office). Those wishing to run for statewide offices must pay similar fees ranging in amount from $192 for State Assemblyman (1% of the annual salary) to $982 for Governor (2% of the annual salary). Other portions of the California Elections Code, not challenged in the present suit, require prospective candidates to file with appropriate state officials a declaration of candidacy and sponsor certificates. Calif. Elections Code §§ 6490–6491, 6494–6495.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 19, 1973

Re: No. 71-1583 - Brown v. Chote and "Hold" cases

MEMORANDUM TO THE CONFERENCE:

We have all been aware that our "hold" cases on Brown v. Chote, may include a case to treat the basic question sought to be raised relating to election filing fees. Here is a summary of each case we are presently holding for Brown v. Chote:

(1) No. 71-1511 -- Norvell v. Apodaca -- Appeal to the New Mexico Supreme Court. Under the New Mexico filing fee system, a candidate must pay 6% of the first year salary of the office which he seeks in order to gain entrance to the primary election. For example, the fee for United States Senator is $2,550. If the candidate receives 15% of the electoral vote, one-half of the fee is refunded. The fees not refunded pay for part of the costs of the election. (This is much like the British system that has worked so well.)

After a decision of a Three-Judge Court, District Court for the District of New Mexico, holding part of the filing fee system unconstitutional, the New Mexico Secretary of State issued an opinion, stating that all New Mexico filing fees were unconstitutional. A candidate for office then filed a petition for a "Writ of Mandate" in the New Mexico Supreme Court, asking that the Secretary of State be required to strike the names of all primary candidates who had not paid the fees. Defining a serious candidate as one who could gain 15% of the electoral vote, the New Mexico Supreme Court found as a fact that no serious candidate had ever been prevented by the fees charged from running for office. Since the fees were thus reasonable, and were related to legitimate state purposes (eleiminating overcrowded ballots and frivolous candidates), the Court held that they were constitutional.

WJ

The name party in the above case was the Secretary of State. She did not appeal to this Court but this appeal was filed by the Attorney General of New Mexico, who had represented the Secretary of State and who had specifically been enjoined by the New Mexico Supreme Court from issuing an advisory opinion which conflicted with the New Mexico Supreme Court decision.

(2) No. 71-1512 -- Brown v. Apodaca -- Certiorari to New Mexico Supreme Court. Petitioners wished to become candidates in a New Mexico primary election. When the New Mexico Supreme Court accepted jurisdiction in Norvell v. Apodaca, petitioners moved to intervene. The New Mexico Supreme Court denied them leave to intervene without opinion. Petitioners ask this Court to determine (a) whether they were denied due process when they were denied leave to intervene; (b) whether petitioners now have standing to appeal from the decision in Norvell v. Apodaca; and (c) whether the New Mexico filing fee system is unconstitutional.

(3) No. 71-6852 -- Lubin v. Allison (Registrar of Los Angeles County) -- Cert. to California Supreme Court. The filing fee system challenged here is precisely the same statutory system challenged in Brown v. Chote. However, whereas Brown v. Chote covered only statewide offices, this suit challenged the validity of the fees as applied to lesser state offices. The fees charged in California are either 1% or 2% of the first year salary of the office sought.

Petitioner, who is indigent, wished to run for the Board of Supervisors of Los Angeles County. Respondent refused to issue to petitioner a set of blank registration forms unless petitioner first presented a check for $701.60. Petitioner filed a petition for a Writ of Mandate in California Superior Court, asking that he and members of his class be allowed to register without paying the required fees. On demurrer, the Superior Court held that the State had a legitimate objective in preventing fraudulent or frivolous candidates from running for office and that the amount of the fees charged was reasonable "as a matter of law." Since the fees were reasonable, the court held that the State need not provide an alternative means of gaining access to the ballot. Subsequent petitions for a Writ of Mandate to the California Court of Appeals and Supreme Court were denied.

WB

(4) No. 72-193 -- Fowler (South Carolina Democratic Party) v. Culbertson -- Appeal to Three-Judge Court, District Court for the District of South Carolina (Craven, Russell, Simons). Under South Carolina law, a candidate who wishes to run in a primary election must file a declaration of candidacy. At that time, he must pay a fee of $500. The candidate may also be assessed by the political party in whose primary he wishes to run. The amount of the assessment is left to the discretion of the political party; according to the District Court, the total fees charged range from $500 to $5,000. The fees are paid to the political parties, to be used as they wish. This is closer to Bullock than other cases.

Appellee, who wished to be a primary candidate for United States Senator, filed this action, challenging the South Carolina filing fee system. The District Court ruled that $850 was the maximum permissible fee which could be charged under the Constitution. Appellant was ordered to adjust other fees downward, so as not to exceed 2% of the annual salary of the office sought. The District Court also ruled that indigents could become candidates without paying any fee and that excess fees paid to political parties had to be returned. Having determined that an injunction should issue, the Three-Judge Court dissolved itself and returned jurisdiction to a single district court for further proceedings.

Appellant argues that the District Court acted improperly in granting relief before evidence was taken or an answer to the complaint filed. He further contends that the court did not know the range of fees charged in South Carolina.

(5) No. 72-455 -- Bush v. Sebesta (Fla.) -- Appeal to Three-Judge Court, District Court for the Middle District of Florida (Roney, Krentzman, Hodges). Florida requires candidates in primary elections for state salaried offices to pay 5% of the first year salary of the office to have their names placed on the ballot. Approximately 80% of the fees charged are paid by the State to the political parties, to be spent as the parties wish. The remainder is paid into the state treasury.

This class action, challenging the Florida filing fee system, was filed by Miranda. Appellant Bush, who is indigent, intervened. To run for the office he sought, appellant would have had to pay $600.

WR

The District Court held that a filing fee of 5% was reasonable. However, it also ruled that the State had to provide some alternative means by which indigent candidates could gain access to the ballot. Since an election was about to take place, the District Court established "interim standards" for the qualification of indigent candidates: (a) those who wished to run for state-wide offices had to secure 10,000 signatures from qualified voters; (b) those running for other offices had to secure the signatures of 1% of the qualified voters, but not more than 3,000 nor less than 100 signatures.[1/] The summary order of the District Court notes that a full opinion will follow.[2/]

Appellant contends that the District Court should have struck down the entire Florida filing fee system, rather than provide an alternative means for indigents to gain access to the ballot. Apparently, part of appellant's argument relates to the fact that fees collected in Florida go to the political parties for whatever use they choose.

(6) No. 72-5187 -- Fair v. Taylor -- (Three-Judge Court, District Court for the Middle District of Florida). This case was consolidated by the District Court with Bush v. Sebesta. Appellant is well known in the Clerk's office in our Court since he has filed some 31 previous pro se petitions and appeals. His petition is difficult to decipher. The Clerk's office informs me that appellant is presently confined to a mental institution in Florida.

Although in most cases above, it is clear that the courts acted on "11th hour" cases and had to respond quickly in the face of approaching deadlines, it is not at all clear that relief granted was intended to be of a strictly interim nature. If we can find a case in this motley collection we should probably drop a note in Brown that we are taking a case on this subject.

Regards,

WEB

1/ This alternative plan was suggested by appellee (the State).

2/ To date, the District Court has filed no opinion. The Clerk's office has been advised that an opinion may be filed shortly.

WR

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

CHAMBERS OF
THE CHIEF JUSTICE

May 4, 1973

Re: No. 71-1583 - Brown v. Chote

MEMORANDUM TO THE CONFERENCE:

Enclosed is the final revision of the above opinion with the footnote added on page 6.

The only other change of any consequence is a language change on page 4 as marked.

If anyone has any problem with this on Monday, it can easily go over on request.

Regards,

WEB

changes pp. 2, 4, 5, 6

To: Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
[illegible]

From: [illegible]

Circulated: ________

Recirculated: MAY 4 [illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1583

Edmund G. Brown, Jr., Secretary of State of California, Appellant, *v.* Raymond G. Chote.	On Appeal from the United States District Court for the Northern District of California.

[April —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This case arises under 28 U. S. C. § 1253 on direct appeal from a three-judge district court in the Northern District of California. The court was convened pursuant to 28 U. S. C. § 2281 when appellee called into question the constitutionality of those provisions of the California Elections Code which require candidates in a primary election to pay a filing fee prior to having their names listed on the primary ballot. Calif. Elections Code §§ 6552 and 6553. Under these provisions, candidates for the federal House of Representatives must pay $425 (1% of the annual salary of the office); candidates for the federal Senate must pay $850 (2% of the salary of the office). Those wishing to run for statewide offices must pay similar fees ranging in amount from $192 for State Assemblyman (1% of the annual salary) to $982 for Governor (2% of the annual salary). Other portions of the California Elections Code, not challenged in the present suit, require prospective candidates to file with appropriate state officials a declaration of candidacy and sponsor certificates. Calif. Elections Code §§ 6490-6491, 6494-6495.

November 24, 1972

Dear Chief:

In No. 71-1583 - Brown v. Chote, I see no reason to get a California lawyer. I think a local District of Columbia attorney would be excellent.

How about Adrian Fisher, Dean of Georgetown Law School?

Or Philip Elman of the same faculty, who argued many cases here for the Department of Justice and later was a member of FTC? He teaches Constitutional Law at Georgetown, I believe.

W. O. D.

The Chief Justice

cc: Conference

WB

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 5, 1973

MEMORANDUM TO THE CONFERENCE:

I thought I owed the Conference a fuller statement of my position in No. 71-1583 the Chote case, in which the 3-judge District Court held the California filing fee for a Congressman to be unconstitutional as applied to an indigent candidate.

William O. Douglas

The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 71-1583

Circulated: 3-5-73

Recirculated:

Edmund G. Brown, Jr., Secretary of State of California, Appellant, *v.* Raymond G. Chote.

On Appeal from the United States District Court for the Northern District of California.

[March —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

This case, which is here on appeal from a three-judge district court, 28 U. S. C. § 1253, calls into question the constitutionality of the provision of the California Election Code which requires as a filing fee for a candidate for the federal House of Representatives 1% of the first year salary for the office, which is $425. The three-judge court by a divided vote held that provision unconstitutional. 342 F. Supp. 1353. We noted probable jurisdiction 409 U. S. —.

The case has been mostly argued on the basis that Chote, the appellee who ran for Congress, was indigent, unable to pay the filing fee, and therefore protected by the long line of cases[1] which hold that rights granted everyone but denied to an indigent solely because of his poverty violates the Equal Protection Clause of the Fourteenth Amendment. It is true that we extended that philosophy to filing fees for candidates who run for public office. *Bullock* v. *Carter*, 405 U. S. 135. We were there concerned, however, with filing fees ranging as high as $8,900. *Id.*, at 145. We said, "Unlike a filing-fee requirement that most candidates could be expected to

[1] See, *e. g.*, *Griffin* v. *Illinois*, 351 U. S. 12, *Harper* v. *Virginia Board of Elections*, 383 U. S. 663, *Boddie* v. *Connecticut*, 401 U. S. 371, 376.

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

From: Douglas, J.

Circulated: 3-15-73

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1583

Edmund G. Brown, Jr., Secretary of State of California, Appellant, *v.* Raymond G. Chote.

On Appeal from the United States District Court for the Northern District of California.

[March —, 1973]

Memorandum from MR. JUSTICE DOUGLAS.

This case, which is here on appeal from a three-judge district court, 28 U. S. C. § 1253, calls into question the constitutionality of the provision of the California Election Code which requires as a filing fee for a candidate for the federal House of Representatives 1% of the first year salary for the office, which is $425.[1] The three-judge court by a divided vote held that provision unconstitutional. 342 F. Supp. 1353. We noted probable jurisdiction 409 U. S. —.

Appellee Chote desired to appear on the ballot for the June 6, 1927, California Primary Election as a nominee to be the Democratic candidate in the general election for the Representative in Congress from the 17th Congressional District. For a candidate's name to appear on

[1] All candidates for state and local office (with the exception of noncompensated and low compensated offices) must pay a filing fee of one or two percent of the first year salary of the office in order to appear on the primary ballot. Calif. Ann. Code Elections §§ 6552–6554. In 1972 the filing fees for statewide elections ranged from $192 for State Assembly (1%) to $982 for Governor (2%). Any write-in candidate, either for the primary or general election (§§ 18601–18604; 6555) and any independent nominee for the general election (§ 6802) must pay the statutory fee.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 27, 1973

Dear Chief:

Please join me in your opinion in No. 71-1583 - Brown v. Chote.

W. O. D.

The Chief Justice

cc: Conference

(B)

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 71-1583

Circulated: 3/27/73

Recirculated: _____

Edmund G. Brown, Jr., Secretary of State of California, Appellant, *v.* Raymond G. Chote. | On Appeal from the United States District Court for the Northern District of California.

[March —, 1973]

MR. JUSTICE DOUGLAS, concurring.

I think the three-judge court exercised its discretion wisely by entering a temporary injunction so that this new and perplexing problem could be resolved. I now would vacate and remand to the District Court with instructions to dismiss the complaint unless appellee under Rule 15, Fed. Rule Civ. Proc., amends his complaint. See *Sierra Club* v. *Morton*, 405 U. S. 727, 735–736 n. 8.

The question raised in the complaint relates to the filing fee of $425 which must be paid in order for a candidate for the federal House of Representatives[1] to get on the California ballot. The issue is presented and argued as though it were governed by the line of cases[2] where we allowed indigents access to courts without pay-

[1] All candidates for state and local office (with the exception of noncompensated and low compensated offices) must pay a filing fee of one or two percent of the first year salary of the office in order to appear on the primary ballot. Calif. Ann. Code Elections §§ 6552–6554. In 1972 the filing fees for statewide elections ranged from $192 for State Assembly (1%) to $982 for Governor (2%). Any write-in candidate, either for the primary or general election (§§ 18601–18604; 6555) and any independent nominee for the general election (§ 6802) must pay the statutory fee.

[2] See, *e. g.*, *Griffin* v. *Illinois*, 351 U. S. 12, and *Boddie* v. *Connecticut*, 401 U. S. 371, 376.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 27, 1972

RE: No. 71-1583 - Brown v. Chote

Dear Chief:

I agree with Bill Douglas and either Adrian Fisher or Phil Elman would be a fine choice.

Sincerely,

Bill

The Chief Justice

cc: The Conference

WB
ddo

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1973

RE: No. 71-1583 - Brown v. Chote

Dear Chief:

I'm afraid that I cannot go along with the position expressed by Bill Douglas in his memorandum of March 5. At conference I indicated that I would affirm the order of the District Court not only on the grounds that the temporary injunction was proper, but also because the entire filing fee system seems to me unconstitutional under Harper v. Virginia Board of Elections, 383 U.S. 663 (1966). My notes from conference indicate that while I was the only one to take that position, there were at least seven votes, including your own, to affirm the District Court's holding that the scheme was unconstitutional. The votes to affirm were "narrow," in the sense that they reflected a view other than my own: namely, Potter's suggestion that while a price tag can be placed on the right to run for office, the state must provide some means for indigents, such as Chote, to obtain a place on the ballot without payment of a fee. Do you and Harry read Bill Douglas, like Bill Rehnquist, as sustaining the constitutionality of the statute? If so, then am I not correct in thinking that there are still five votes to affirm on the ground of its unconstitutionality? In that case, since Bill Douglas' disposition is not to affirm but to vacate and remand with directions to dismiss the complaint, does it fall to me to assign the opinion?

Sincerely,

The Chief Justice

cc: The Conference

March 26, 1973

RE: No. 71-1583 Brown v. Chote

Dear Chief:

Your proposed disposition has considerable appeal for me but I am wondering what this means for the cases we have held - No. 71-1511 and 71-1512 (both from New Mexico), No. 72-193 (from South Carolina), No. 71-6852 (like Chote from California), No. 72-455 and No. 72-5187 (both from Florida). If we have to take one or more of these, and particularly No. 71-6852 from California, do we gain much by not deciding the constitutional question in Chote?

Sincerely,

WJB

The Chief Justice

WB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 10, 1973

Memo ou
3/5

Dear Chief
I agree with
Potter's suggestion
April 9th
No inference

RE: No. 71-1583 Brown v. Chote

Dear Chief:

I join Potter in feeling that we ought adopt his proposal of selecting one of the held cases and footnoting it in your opinion before your opinion is handed down.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 7, 1973

MEMORANDUM TO THE CONFERENCE

Re: 71-1583 - Brown v. Chote

Upon the understanding that a nose count is now in order, this is to advise that I am not disposed to join Bill Douglas' circulation in this case.

P. S.

P. S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 9, 1973

No. 71-1583 - Brown v. Chote

Dear Chief,

I think your opinion demonstrates that the underlying merits of this litigation are not properly now before us, and I would therefore join the opinion with one suggestion:

Upon the mistaken understanding that the underlying merits were presented in this case, the Conference decided to set this case for hearing and, pending its final disposition, to hold at least five other cases that seemingly present the same basic question. I would assume that we shall now have to set at least one of those previously held cases for argument. (At least some of them are appeals, and so there is no possibility of a discretionary denial of certiorari.) I would therefore suggest that before the present opinion is announced, the Clerk be requested to put the "held" cases on the Conference List, that we decide which of these cases to set for hearing, and that this be recorded in a footnote in the present opinion. For what it is worth, my own candidate for hearing is Bush v. Sebesta, No. 72-455, an appeal from a three-judge federal court in Florida.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

16

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 8, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1583 - Brown v. Chote

I am unable to join Bill Douglas in this case. My views are closer to those of Bill Brennan's.

B.R.W.

3

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Chief:

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 6, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1583 - Brown v. Chote

I have read Bill Douglas' memorandum and also the Chief Justice's memorandum on this case. While I am not too sure what is going on around here I feel obliged to note that I am almost in complete disagreement with Bill's memorandum.

T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 12, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Chief:

I agree with Potter's suggestion of April 9th.

Sincerely,

T.M.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Bill:

Although my own analysis was somewhat different, I think I could go along with the disposition of this case you have suggested by your circulation of March 5.

Sincerely,

Harry

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Chief:

Please join me.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1973

Re: No. 71-1583 Brown v. Chote

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1973

Re: No. 71-1583 - Brown v. Chote

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference