

The Burger Court Opinion Writing Database

Broadrick v. Oklahoma

413 U.S. 601 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



(5)

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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1973

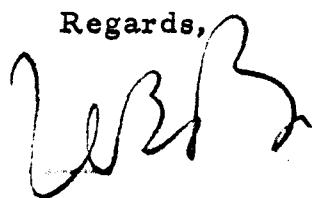
Re: No. 71-1639 - William M. Broadrick, et al v. State of
Oklahoma, et al

Dear Byron:

Please join me in your fine opinion in the above case.

I will try to resist the temptation to add a hearty "Amen" in
concurrence.

Regards,



Mr. Justice White

Copies to 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

1st DRAFT

SUPREME COURT OF THE UNITED STATES Douglas, J.

No. 71-1639

Circulated: 6-5-73

Recirculated: _____

William M. Broadrick et al.,
 Appellants, } On Appeal from the United
 v. } States District Court for
 State of Oklahoma et al. } the Western District of
 Oklahoma.

[June —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

This case in my view should be governed by some of the considerations I set forth in my dissent in the *Letter Carriers* case, *ante* —.

Section 18 (7) states

"No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a *partisan political club*, or a candidate for nomination or election to any paid public office, or *shall take part in the management or affairs* of any political party or in any political campaign, except to exercise his rights as a citizen privately to express his opinion and to cast his vote." (Emphasis supplied.)

If this were a regulation of business or commercial matters the Court's citation of *Connally v. General Construction Co.*, 385, 391, would be apt. *Connally* was a case involving a state law making it a crime for contractors with the State to pay their workmen less than the "current rate of per diem wages in the locality where the work is performed." The Court held the Act too vague to pass muster as a penal measure. I would concede that by the *Connally* test § 18 (7) would not fall. For the provision in question bars an employee from taking "part in the management or affairs of any political

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: DeGrazia, J.

No. 71-1639

Circulated:

William M. Broadrick et al.,) On Appeal from the United
Appellants.) States District Court for
v.) the Western District of
State of Oklahoma et al.) Oklahoma.

the United
States Court for
Recapitalated: 6-6-93

[June — 1973]

MR. JUSTICE DOUGLAS, dissenting.

This case in my view should be governed by some of the considerations I set forth in my dissent in the *Letter Carriers* case, *ante* ____.

Section 18(7) states

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 1, 1973

MEMORANDUM TO THE CONFERENCE

RE: No. 71-1639 Broadrick v. Oklahoma
No. 72-634 U.S. Civil Service Commission
v. National Letter Carriers, etc.

I shall circulate dissents in these two cases in
due course.

W. J. B. Jr.

B

SUPREME COURT OF THE UNITED STATES

W.B.
Please join me
in your dissent
M

No. 71-1639

William M. Broadrick et al.,
Appellants,

v.

State of Oklahoma et al.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice ~~Apperson~~ from the United
Mr. Justice ~~Apperson~~ District Court
Mr. Justice ~~Apperson~~ Western District
Mr. Justice ~~Apperson~~ Oklahoma.
Mr. Justice Rehnquist

From: Brennan, J.

Circulated: 6/15/73

[June __, 1973]

Recirculated: _____

MR. JUSTICE BRENNAN, dissenting:

Whatever one's view of the desirability or constitutionality of legislative efforts to restrict the political activities of government employees, one must regard today's decision upholding § 818 of the Oklahoma Merit System of Personnel Administration Act 1 as a wholly unjustified retreat from fundamental and previously well-established First Amendment principles. For the purposes of this decision, the Court assumes--perhaps even concedes--that the statute at issue here sweeps too broadly, barring speech and conduct that are constitutionally protected even under the standards announced in United Public Workers v. Mitchell, 330 U.S. 75 (1947), and reiterated today in United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO, ante, p. ___. Nevertheless, the Court rejects appellants' contention that the statute is

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 ✓ The City of Washington
 Mr. Justice BRENNAN
 Mr. Justice STEWART
 Mr. Justice MARSHALL
 ✓ Mr. Justice BLACKBURNE
 Mr. Justice DOUGLASS
 Mr. Justice POWELL
 Mr. Justice REHNQUIST

Pinned
 1st DRAFT

SUPREME COURT OF THE UNITED STATES *Brennan, J.*

No. 71-1639

Circulated

William M. Broadrick et al., On Appeal from the United
 Appellants, States District Court for
 v. the Western District of
 State of Oklahoma et al. Oklahoma.

[June —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

Whatever one's view of the desirability or constitutionality of legislative efforts to restrict the political activities of government employees, one must regard today's decision upholding § 818 of the Oklahoma Merit System of Personnel Administration Act¹ as a wholly unjustified retreat from fundamental and previously well-established First and Fourteenth Amendment principles. For the purposes of this decision, the Court assumes—perhaps even concedes—that the statute at issue here sweeps too broadly, barring speech and conduct that are

¹ Okla. Stat. Ann. § 818 provides in pertinent part:

"No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service.

"No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his rights as a citizen privately to express his opinion and to cast his vote."

109.5

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1973

71-1639 - Broadrick v. Okla.

Dear Bill,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.
P.

Mr. Justice Brennan

Copies to the Conference

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

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Revised: 5-30-73

No. 71-1639

Recirculated: _____

William M. Broadrick et al., | On Appeal from the United
 Appellants, | States District Court for
 v. | the Western District of
 State of Oklahoma et al. | Oklahoma.

[June —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 818 of Oklahoma's Merit System of Personnel Administration Act, 74 Okla. Stat. Ann. § 801 *et seq.*, restricts the political activities of the State's classified civil servants in much the same manner that the Hatch Act proscribes partisan political activities of federal employees. Three employees of the Oklahoma Corporation Commission who are subject to the proscriptions of § 818 seek to have two of its paragraphs declared unconstitutional on their face and enjoined because of asserted vagueness and overbreadth. After a hearing, the District Court upheld the section and denied relief. 338 F. Supp. 711. We noted probable jurisdiction of the appeal, 409 U. S. 1058, so that appellants' claims could be considered together with those of their federal counterparts in *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, *ante*, p. —. We affirm the judgment of the District Court.

Section 818 was enacted in 1959 when the State first established its Merit System of Personnel Administration.¹ The section serves roughly the same function as

¹ The section reads as follows:

"[1] No person in the classified service shall be appointed to, or demoted or dismissed from any position in the classified service, or

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STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 6-7, 11, 16

2nd DRAFT

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

From: White, J.

Circulated: _____

Recirculated: 6-8-7

SUPREME COURT OF THE UNITED STATES

No. 71-1639

William M. Broadrick et al., On Appeal from the United
Appellants, } States District Court for
v. } the Western District of
State of Oklahoma et al. Oklahoma.

[June — 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 818 of Oklahoma's Merit System of Personnel Administration Act, Okla. Stat. Ann., Tit. 74, § 801 *et seq.*, restricts the political activities of the State's classified civil servants in much the same manner that the Hatch Act proscribes partisan political activities of federal employees. Three employees of the Oklahoma Corporation Commission who are subject to the proscriptions of § 818 seek to have two of its paragraphs declared unconstitutional on their face and enjoined because of asserted vagueness and overbreadth. After a hearing, the District Court upheld the provisions and denied relief. 338 F. Supp. 711. We noted probable jurisdiction of the appeal, 409 U. S. 1058, so that appellants' claims could be considered together with those of their federal counterparts in *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, *ante*, p. —. We affirm the judgment of the District Court.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1973

MEMORANDUM FOR THE CONFERENCE

The following two cases were held for Broadrick,
No. 71-1639, and Letter Carriers, No. 72-634:

No. 72-1170, Elder v. Rampton, is an appeal from a judgment of the Federal District Court in Utah upholding the State's little Hatch Act against vagueness and equal protection challenges. Both these holdings are amply supported by Broadrick and Letter Carriers. The District Court also rejected an overbreadth attack directed against the provision relating to employees who wish to run for "any political office." The Act requires such an employee to apply for leave of absence. Appellant ran without obtaining leave of absence and was dismissed. He asserted overbreadth because the term "political" was not restricted to "partisan" political offices. The District Court, however, thought a state court could easily cure overbreadth by simply construing the word "political" to mean only partisan political office. It therefore upheld the statute. This holding too could be summarily affirmed, citing both Broadrick and Letter Carriers.

WP

-2-

Swinney v. Untreiner, No. 72-1316, is here from the Florida Supreme Court's judgment sustaining the State's Hatch Act. The Act seems at least as specific as the Oklahoma Act, and probably more so. It is also directed expressly at partisan political conduct in the context of organized campaigns. The named plaintiff's conduct is plainly proscribable. See the complaint, petition page 29. On the basis of the two cases, I would recommend that certiorari be denied.


B.R.W.

WB

B

pp 13, 14, 16

one copy

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 71-1639

Recirculated: 6-19-7

William M. Broadrick et al., On Appeal from the United
Appellants, States District Court for
v. the Western District of
State of Oklahoma et al. Oklahoma.

[June —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 818 of Oklahoma's Merit System of Personnel Administration Act, Okla. Stat. Ann., Tit. 74, § 801 *et seq.*, restricts the political activities of the State's classified civil servants in much the same manner that the Hatch Act proscribes partisan political activities of federal employees. Three employees of the Oklahoma Corporation Commission who are subject to the proscriptions of § 818 seek to have two of its paragraphs declared unconstitutional on their face and enjoined because of asserted vagueness and overbreadth. After a hearing, the District Court upheld the provisions and denied relief. 338 F. Supp. 711. We noted probable jurisdiction of the appeal, 409 U. S. 1058, so that appellants' claims could be considered together with those of their federal counterparts in *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, *ante*, p. —. We affirm the judgment of the District Court.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 20, 1973

Re: No. 71-1639 - Broadrick v. Oklahoma

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

172-634
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1973

Re: No. 71-1639 - Broadrick v. Oklahoma

Dear Byron:

Please join me.

Sincerely

H. A. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

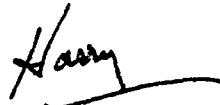
June 18, 1973

Re: No. 71-1639 - Broadrick v. Oklahoma

Dear Byron:

I am still with you.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

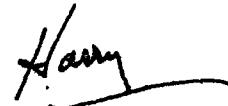
June 18, 1973

Re: No. 71-1639 - Broadrick v. Oklahoma

Dear Byron:

I am still with you.

Sincerely,



Mr. Justice White

cc: The Conference

Dear Byron:

The proposed new footnotes 14 and 17 seem fine to me, and I have no helpful suggestion.

H. A. B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1973

No. 71-1639 Broderick v. Oklahoma

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

3

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1973

Re: No. 71-1639 - Broadrick v. Oklahoma

Dear Byron:

Please join me.

Sincerely,

W.W.

Mr. Justice White

Copies to the Conference