The Burger Court Opinion Writing Database

NAACP v. New York

413 U.S. 345 (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

June 18, 1973

Re: 72-129 - NAACP v. New York

Dear Harry:

Please join me.

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

June 14, 1973

Dear Harry:

I'll write a dissent in 72-129, NAACP v. New York and try to have it around by Monday the 18th.

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

SUPREME COURT OF THE UNITED STATES

No. 72-129

National Association for the Advancement of Colored People, etc. et al, Appellants

v.

State of New York et al

On Appeal from the United States District Court for the Diatrict of Columbia

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: 6-15

Recirculated: _____

Mr. Justice Douglas, dissenting.

When two mighty political agencies such as the Department of Justice in Washington, D. C. and the Attorney General of New York in Albany agree that there is no racial discrimination in voting in three New York counties although the historic record reeks with it, it is time to take a careful look and not let this litigation be ended by an agreement between friendly political allies.

The 1970 Act was specifically aimed at New York - particularly Bronx, King, and New York counties. It was pointed out in the debates that under the earlier Act these counties were not included, that while in the 1964 election more than 50 per cent of the voters were registered and more than 50 per cent voted, in the 1968 election 50 per cent were not registered or voting. 116 Cong. Rec. 6654, 6659. It was pointed out that New York's literacy requirement was enacted with the view of discriminating on the basis of race. 116 Cong. Rec. 6660. New York Blacks were illiterates because their education, if any, had been in second class schools elsewhere. 116 Cong.Rec. 6661. It was emphasized that wherever the Blacks had been

SUPREME COURT OF THE UNITED STATES

No. 72-129

National Association for the Advancement of Colored People, etc., et al., Appellants,

v.

State of New York et al.

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

From: Brennan, J.

Circulated: 6/15/73

Recirculated: _____

[June ___, 1973]

MR. JUSTICE BRENNAN, dissenting:

In my view, the District Court erred in denying appellants' motion for leave to intervene in this suit under § 4(a) of the Voting Rights Act of 1970, 42 U.S.C. § 1973b(a). The case plainly turns on its facts, and its impact on the development of principles governing intervention will doubtless be small. But what is ultimately at stake in this suit by New York to obtain an exemption under the Voting Rights Act is the applicability of the protections of the Act to 2.2 million minority group members residing in three New York Counties. According to appellants, the total number of minority group members affected by all previous exemptions combined was less than 100,000.

At the same time that the District Court denied the motion to intervene, it granted the State's motion for

Mr. The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Brennan, J.

No. 72-129

Circulated: _____

Recirculated: 6/19/73

National Association for the Advancement of Colored People, etc., et al., Appellants, *v.* State of New York et al.	On Appeal from the United States District Court for the District of Columbia.

[June —, 1973]

MR. JUSTICE BRENNAN, dissenting.

In my view, the District Court erred in denying appellants' motion for leave to intervene in this suit under § 4 (a) of the Voting Rights Act of 1970, 42 U. S. C. § 1973b (a). The case plainly turns on its facts, and its impact on the development of principles governing intervention will doubtless be small. But what is ultimately at stake in this suit by New York to obtain an exemption under the Voting Rights Act is the applicability of the protections of the Act to 2.2 million minority group members residing in three New York counties. According to appellants, the total number of minority group members affected by all previous exemptions combined was less than 100,000.

At the same time that the District Court denied the motion to intervene, it granted the State's motion for summary judgment, thereby exempting these three counties from the coverage of the Act. The United States, defendant in the suit, consented to the entry of summary judgment. As a result, the contention that appellants were prepared to urge—namely, that the grant of an exemption would nullify the specific congressional intent to extend the protections of the Act to the class represented by appellants—was never laid before the Court.

116-8

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 14, 1973

72-129 - NAACP v. New York

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

June 15, 1973

Re: No. 72-129 - NAACP v. New York

Dear Harry:

Join me, please.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1973

MEMORANDUM TO THE CONFERENCE:

Re: No. 72-129 - NAACP v. New York

I regret that I have been delayed in getting a proposed opinion into circulation. It is now at the printer and should be available within 24 hours.

H.A.B.

WB
WD

To: The [illegible] Justice
[illegible] Douglas
[illegible] Brennan
[illegible] Stewart
[illegible] Justice White
[illegible] Marshall
[illegible] Justice Powell
[illegible] Justice Rehnquist

From: Blackmun, J.

Circulated: 6/13/73

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-129

National Association for the Advancement of Colored People, etc., et al., Appellants, v. State of New York et al.	On Appeal from the United States District Court for the District of Columbia.

[June — 1973]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This appeal from a three-judge district court for the District of Columbia comes to us pursuant to the direct-review provisions of § 4 (a) of the Voting Rights Act of 1965, Pub. L. 89–110, 79 Stat. 437, 438, as amended, 42 U. S. C. § 1973b (a).[1] The appellants[2] seek review of

[1] "To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color . . .

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the pro-

(Footnote 2 is on p. 2)

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1973

No. 72-129 NAACP v. New York

Dear H. ry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1973

Re: No. 72-129 - NAACP v. New York

Dear Harry:

Please join me in your opinion for the Court.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 26, 1973

Re: No. 72-146 - Hunter v. U.S.

Dear Chief:

This is in response to your memorandum of February 23. My tentative preference is to let No. 72-419, Pittsburgh Press Co. v. Pittsburgh Commission, come on for regular hearing in March, and to relist the Hunter case for the conference of March 30. At that time we shall be able to decide whether Hunter is a hold for Pittsburgh or should be granted and heard in the fall. My own feeling is that Pittsburgh will not cover Hunter and that Hunter ought to be argued, but I am somewhat reluctant to grant Hunter now before Pittsburgh has been explored in depth.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference