

The Burger Court Opinion Writing Database

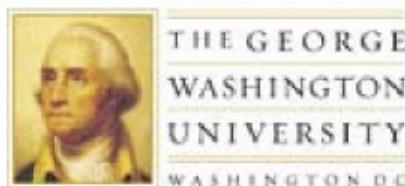
Civil Service Commission v. Letter Carriers

413 U.S. 548 (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

471-1639

June 6, 1973

Re: No. 72-634 - U.S. Civil Service Commission v. National Association of Letter Carriers

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,

WWS

Mr. Justice White

Copies to the Conference

3

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 4, 1973

MEMO TO CONFERENCE:

I will shortly circulate a
dissent in 72-634, U.S. Civil Service v.
National Association and in the companion
state case 71-1639, Broadrick v. Oklahoma.

WV
William O. Douglas

The Conference

5
WCD
Leave for 2nd in your clerical
H

1st DRAFT

SUPREME COURT OF THE UNITED STATES

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: 6-5-73

United States Civil Service
Commission et al.

Recirculated: _____

Appellants.

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

National Association of Let-
ter Carriers, AFL-CIO
et al.

June -- 1973

MR. JUSTICE DOUGLAS, dissenting

The Hatch Act by § 9 (a) prohibits federal employees from taking "an active part in political management or in political campaigns." Some of the employees, whose union is speaking for them, want

"to run in state and local elections for the school board, for city council, for mayor

"to write letters on political subjects to newspapers

"to be a delegate in a political convention

"to run for an office and hold office in a political party or political club

"to campaign for candidates for political office

"to work at polling places in behalf of a political party.'

There is no definition of what "an active part . . . in political campaigns" means. The Act incorporates over 3,000 rulings of the Civil Service Commission between 1886 and 1940 and many hundreds of rulings since 1940. But even with that gloss on the Act, the critical phrases lack precision. In 1971 the Commission published a three-volume work entitled Political Activities Reporter

C
M 1

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

No. 72-634

From: _____

Circulated: _____

Recirculated: 6-21

United States Civil Service
Commission et al.,
Appellants,
v.
National Association of Letter
Carriers, AFL-CIO,
et al.

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

[June —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The Hatch Act by § 9 (a) prohibits federal employees from taking "an active part in political management or in political campaigns." Some of the employees, whose union is speaking for them, want

112-8

- "to run in state and local elections for the school board, for city council, for mayor
- "to write letters on political subjects to newspapers
- "to be a delegate in a political convention
- "to run for an office and hold office in a political party or political club
- "to campaign for candidates for political office
- "to work at polling places in behalf of a political party."

There is no definition of what "an active part . . . in political campaigns" means. The Act incorporates over 3,000 rulings of the Civil Service Commission between 1886 and 1940 and many hundreds of rulings since 1940. But even with that gloss on the Act, the critical phrases lack precision. In 1971 the Commission published a three-volume work entitled Political Activities Reporter

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 5, 1973

RE: No. 72-634 - U.S. Civil Service Commission
v. National Association of Letter Carriers

Dear Bill:

Please join me in your fine dissent in the
above. I may add a word or two of my own in
a day or two.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1973

Re: No. 72-634 - U. S. Civil Service Comm'n
v. Letter Carriers

Dear Byron,

I think you have done a fine job with
a difficult case, and am glad to join your opinion
for the Court.

Sincerely yours,

Q.S.
J

Mr. Justice White

Copies to the Conference

16, 25

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

Recirculated: _____

No. 72-634

United States Civil Service
Commission et al.,
Appellants,
v.
National Association of Letter
Carriers, AFL-CIO,
et al.

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

[June —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

On December 12, 1972, we noted probable jurisdiction of this appeal, — U. S. —, based on a jurisdictional statement presenting the single question whether the prohibition in § 9 (a) of the Hatch Act, now codified in 5 U. S. C. § 7324 (a)(2), against federal employees taking "an active part in political management or in political campaigns," is unconstitutional on its face. Section 7324 (a) provides:

"An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

“(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

"(2) take an active part in political management or in political campaigns.

“For the purpose of this subsection, the phrase ‘an active part in political management or in political campaigns’ means those acts of political management or political campaigning which were prohibited

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9, 17, 18, 20, 23

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 6-5-1

No 72-634

United States Civil Service
Commission et al.

Appellants.	On Appeal from the United States District Court for the District of Columbia.
National Association of Letter Carriers, AFL-CIO et al.	

[June 27, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court

On December 12, 1972, we noted probable jurisdiction of this appeal, 409 U. S. 1058, based on a jurisdictional statement presenting the single question whether the prohibition in § 9 (a) of the Hatch Act, now codified in 5 U. S. C. § 7324 (a)(2), against federal employees taking "an active part in political management or in political campaigns," is unconstitutional on its face. Section 7324 (a) provides:

"An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

"(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

"(2) take an active part in political management or in political campaigns.

"For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 7, 14, 15, 20

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marsh
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 6-8-73
No. 72-634

United States Civil Service
Commission et al.

Appellants.

v.

National Association of Letter Carriers, AFL-CIO,
et al.

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

[June 11, 1973]

MR. JUSTICE WHITE delivered the opinion of the
Court.

On December 12, 1972, we noted probable jurisdiction of this appeal, 409 U. S. 1058, based on a jurisdictional statement presenting the single question whether the prohibition in § 9 (a) of the Hatch Act, now codified in 5 U. S. C. § 7324 (a)(2), against federal employees taking "an active part in political management or in political campaigns," is unconstitutional on its face. Section 7324 (a) provides:

"An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

"(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election, or

"(2) take an active part in political management or in political campaigns.

"For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited

Stylistic changes throughout

S

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.

4th DRAFT

Circulated: _____

Accredited: June 21, 1973

SUPREME COURT OF THE UNITED STATES

No. 72-634

United States Civil Service
Commission et al.,

Appellants,

v.

National Association of Let-
ter Carriers, AFL-CIO,
et al.

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

[June —, 1973]

MR. JUSTICE WHITE delivered the opinion of the
Court.

On December 11, 1972, we noted probable jurisdiction
of this appeal, 409 U. S. 1058, based on a jurisdictional
statement presenting the single question whether the
prohibition in § 9 (a) of the Hatch Act, now codified in
5 U. S. C. § 7324 (a)(2), against federal employees tak-
ing "an active part in political management or in political
campaigns," is unconstitutional on its face. Section
7324 (a) provides:

"An employee in an Executive agency or an in-
dividual employed by the government of the District
of Columbia may not—

"(1) use his official authority or influence for the
purpose of interfering with or affecting the result
of an election; or

"(2) take an active part in political manage-
ment or in political campaigns.

"For the purpose of this subsection, the phrase 'an
active part in political management or in political
campaigns' means those acts of political manage-
ment or political campaigning which were prohibited

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 20, 1973

Re: No. 72-634 - U.S. Civil Service Commission
v. Nat'l. Assoc. Letter Carrier

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Douglas

cc: Conference

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639
M
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1973

Re: No. 72-634 - U.S. Civil Service Commission v.
National Assn. of Letter Carriers

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 4, 1973

Re: No. 72-634 - U.S. Civil Service Commission v.
National Assn. of Letter Carriers

Dear Byron:

Please join me.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

Dear Byron:

On page 31, the last two lines of the opinion contain a reference to the Court of Appeals. Should this be the District Court?

H. A. B.

B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1973

No. 72-634 U. S. Civil Service
Commission v. National Association
of Letter Carriers

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1973

Re: No. 72-634 - U. S. Civil Service Commission v.
National Association of Letter Carriers

Dear Byron:

Please join me.

Sincerely,

WRW

Mr. Justice White

Copies to the Conference