

# 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



2  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

71-1639

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,

WRB

Mr. Justice White

Copies to the Conference

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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.

  
William O. Douglas

The Conference

5  
WOD  
Please join me  
in your dissent  
JH

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

No 72-~~133~~  
634

From: Douglas, J.

Circulated: 6-5-73

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

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. 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

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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

"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

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"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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112-8

57  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 5, 1973

RE: No. 72-<sup>6</sup>34 - 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

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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 opin-  
ion for the Court.

Sincerely yours,

P.S.

Mr. Justice White

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

Circulated: May 26, 1973

No. 72-634

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

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



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

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

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

No 72-634

Recirculated: 6-5-73

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, 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

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

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73  
STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 7, 14, 15, 20

3rd DRAFT

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

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 72-634

Recirculated: 6-8-73

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. 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

*Style changes throughout*

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: \_\_\_\_\_)

**SUPREME COURT OF THE UNITED STATES**

Recirculated: June 21, 1973

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 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 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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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

M  
x 1639

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. G. 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  
CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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

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,



Mr. Justice White

Copies to the Conference