

The Burger Court Opinion Writing Database

Georgia v. United States
411 U.S. 526 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice White
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice Thurgood Marshall
Mr. Justice William J. Brennan, Jr.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-75

From: The Chief Justice
Circulated MAY 4 1973

Georgia et al., Appellants, } On Appeal from the ~~United States~~ _____
v. _____
United States. } States District Court for
the Northern District of
Georgia.

[May —, 1973]

MR. CHIEF JUSTICE BURGER, concurring.

(6) I concur in the result reached by the Court but I do so under the mandate of *Allen v. State Board of Elections*, 393 U. S. 544 (1959). I have previously expressed my reservations as to the correctness of that holding. See *Perkins v. Matthews*, 400 U. S. 379, 397 (1971) (BLACKMUN, J., concurring).

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 21, 1973

Dear Potter:

Please join me in your opinion
in 72-75, Georgia v. United States.

3
William O. Douglas

Mr. Justice Stewart

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 22, 1973

RE: No. 72-75 Georgia v. United States

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Please you're
11

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

1st DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAR 21 1973

No. 72-75

Recirculated: _____

Georgia et al., Appellants, } On Appeal from the United
v. } States District Court for
United States. } the Northern District of
Georgia.

[March —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Attorney General of the United States brought this suit under § 12 (d) of the Voting Rights Act as amended, 42 U. S. C. § 1973j (d), to enjoin the State of Georgia from conducting elections for its House of Representatives under the 1972 legislative reapportionment law. A three-judge federal court in the Northern District of Georgia agreed that certain aspects of the reapportionment law came within the ambit of § 5 of the Act, 42 U. S. C. § 1973c, and that the State, which is subject to the provisions of § 5,¹ had not obtained prior clearance from either the Attorney General or the District Court for the District of Columbia. Accordingly, and without reaching the question whether the reapportionment plan had the purpose or effect of "denying or abridging the right to vote on account of race or color,"

¹ A State is subject to § 5 if it qualifies under § 4 (b), 42 U. S. C. § 1973b (b). Covered States are those which on November 1, 1964, employed any of several enumerated tests or devices as a prerequisite to voting, and in which less than 50% of eligible voters were registered to vote or actually voted in the November 1964 presidential election. States that meet identical criteria with respect to the 1968 presidential election are also covered under the amended Act. It is stipulated that Georgia is covered under § 4 (b).

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Journeled 3/27/73 P.9

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

2nd DRAFT

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SUPREME COURT OF THE UNITED STATES

Argued: Stewart, J.

No. 72-75

Circulated: _____

Recirculated: MAR 23 1973

Georgia et al., Appellants, } On Appeal from the United
v. } States District Court for
United States. } the Northern District of
Georgia.

[March —, 1973]

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¹ A State is subject to § 5 if it qualifies under § 4 (b), 42 U. S. C. § 1973b (b). Covered States are those which on November 1, 1964, employed any of several enumerated tests or devices as a prerequisite to voting, and in which less than 50% of eligible voters were registered to vote or actually voted in the November 1964 presidential election. States that meet identical criteria with respect to the 1968 presidential election are also covered under the amended Act. It is stipulated that Georgia is covered under § 4 (b).

for
CHAMBERS OF
JUSTICE BYRON R. WHITE

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

March 22, 1973

Re: No. 72-75 - Georgia v. United States

Dear Potter:

As presently advised, I plan to circulate
a dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to 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: 3-2)-1

No. 72-75

Recirculated: _____

Georgia et al., Appellants, v. United States. } On Appeal from the United States District Court for the Northern District of Georgia.

[April —, 1973]

MR. JUSTICE WHITE, dissenting.

Section 5 of the Voting Rights Act of 1965 provides that a State may not put into effect any change in voting qualifications or voting standards, practices or procedures until it either procures a declaratory judgment from the United States District Court for the District of Columbia to the effect that the alteration does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or submits the alteration to the Attorney General and an objection has not been interposed by that official during the ensuing 60 days. In this case, the Attorney General interposed an objection on March 24, 1972, to the March 9 reapportionment plan of the Georgia House of Representatives and shortly thereafter sued to enjoin the use of that plan on the ground that the State had obtained neither the approval of the Attorney General nor that of the District Court. The District Court held § 5 was applicable to changes in state apportionment plans and that the section prevented the March 9 reapportionment from going into effect.

I agree that in the light of our prior cases and congressional reenactment of § 5, that section must be held to reach state reapportionment statutes. Contrary to the Court, however, it is my view that the Attorney General did not interpose an objection contemplated by § 5

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C
2, 3

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: _____
No. 72-75

Recirculated: 4-19-73

Georgia et al., Appellants, } On Appeal from the United
v. } States District Court for
United States. } the Northern District of
Georgia.

[April —, 1973]

MR. JUSTICE WHITE, dissenting.

Section 5 of the Voting Rights Act of 1965 provides that a State may not put into effect any change in voting qualifications or voting standards, practices or procedures until it either procures a declaratory judgment from the United States District Court for the District of Columbia to the effect that the alteration does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or submits the alteration to the Attorney General and an objection has not been interposed by that official during the ensuing 60 days. In this case, the Attorney General interposed an objection on March 24, 1972, to the March 9 reapportionment plan of the Georgia House of Representatives and shortly thereafter sued to enjoin the use of that plan on the ground that the State had obtained neither the approval of the Attorney General nor that of the District Court. The District Court held § 5 was applicable to changes in state apportionment plans and that the section prevented the March 9 reapportionment from going into effect.

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B
pp 1, 2

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

SUPREME COURT OF THE UNITED STATES

on: White, J.

No. 72-75

Circulated: _____

Recirculated: 4-27-

Georgia et al., Appellants,
v.
United States. } On Appeal from the United
States District Court for
the Northern District of
Georgia.

[April —, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE POWELL
and MR. JUSTICE REHNQUIST join, dissenting.

Section 5 of the Voting Rights Act of 1965 provides that a State may not put into effect any change in voting qualifications or voting standards, practices or procedures until it either procures a declaratory judgment from the United States District Court for the District of Columbia to the effect that the alteration does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or submits the alteration to the Attorney General and an objection has not been interposed by that official during the ensuing 60 days. In this case, the Attorney General interposed an objection on March 24, 1972, to the March 9 reapportionment plan of the Georgia House of Representatives and shortly thereafter sued to enjoin the use of that plan on the ground that the State had obtained neither the approval of the Attorney General nor that of the District Court. The District Court held § 5 was applicable to changes in state apportionment plans and that the section prevented the March 9 reapportionment from going into effect.

I agree that in the light of our prior cases and congressional reenactment of § 5, that section must be held to reach state reapportionment statutes. Contrary to the Court, however, it is my view that the Attorney Gen-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 22, 1973

Re: No. 72-75 - Georgia v. United States

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 22, 1973

Re: No. 72-75 - Georgia, et al. v. United States

Dear Potter:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1973

No. 72-75 Georgia v. United States

Dear Potter:

I write merely to say that I have not yet decided what to do in this case.

As I have stated on more than one occasion, I consider the Voting Rights Act of 1965 - limited as it is to a handful of states rather than applying to the entire country - to be discriminatory and indefensible sectional rather than national legislation. I agree with Justice Black's dissent in Katzenbach. I have even stronger feelings as to Perkins, which extended - quite without justification in my opinion - the Act to annexation in a way that does grievous harm to the orderly development of urban communities, certainly in states like Virginia.

Yet, these are established precedents and in the end I will either join Byron's narrow dissent, or concur in the result reached in your opinion accompanied by a brief statement that I do so only by virtue of feeling bound by decisions with which I totally disagree.

I will only add, lest I be misunderstood, that I would have no objection (constitutionally or from the viewpoint of protecting the rights of all citizens to vote) to a carefully drawn Voting Rights Act which applied uniformly to all fifty states. It should exclude apportionment and annexation, and also should eliminate the offensive requirement that - as Byron suggests - states, hat in hand, obtain the consent of the Attorney General or run the gauntlet of the federal court here in the District before an act of the state legislature may go into effect. The normal procedures available for testing the validity of state statutes should have sufficed.

Sincerely,

L Lewis

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice O'Connor

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES: ~~APR 26 1973~~

Recirculated: _____

No. 72-75

Georgia et al., Appellants, } On Appeal from the United
v. } States District Court for
United States. } the Northern District of
Georgia.

[May —, 1973]

MR. JUSTICE POWELL, dissenting.

For the reasons stated in his opinion, I agree with MR. JUSTICE WHITE that the Attorney General did not comply with § 5 of the Voting Rights Act, 42 U. S. C. § 1973c, and that therefore Georgia's reapportionment act should have been allowed to go into effect. It is indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a State to submit its legislation for *advance* review.*

*As Mr. Justice Black stated, the power vested in federal officials under § 5 of the Act to veto state laws in advance of their effectiveness "distorts our constitutional structure of government." *South Carolina v. Katzenbach*, 383 U. S. 301, 358 (1966) (dissenting opinion). A similar appraisal was made by Mr. Justice Harlan, who characterized § 5, as construed by the Court, as "a revolutionary innovation in American government." *Allen v. Board of Elections*, 393 U. S. 544, 585 (1969) (concurring in part and dissenting in part). I have no doubt as to the power of the Congress under the Fifteenth Amendment to enact appropriate legislation to assure that the rights of citizens to vote shall not be denied, abridged or infringed in any way "on account of race, color, or previous condition of servitude." Indeed, in my view there is more than a power to enact such legislation, there is a duty. My disagreement is with the unprecedented requirement of advance review of state or local legislative acts by federal authorities, rendered the more noxious by its selective application in only a few States.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 26, 1973

Re: No. 72-75 Georgia v. United States

Dear Byron:

Please join me in your dissent, which I am supplementing by a brief additional statement being circulated today.

Sincerely,

Levitt

Mr. Justice White

cc: The Conference

4-011

April 18, 1973

Re: No. 72-75 - Georgia v. United States

Dear Byron:

I agree completely with the substance of your proposed dissent in this case, but would feel more comfortable in joining it if you would consider making the following changes:

On page 2, in the sentence beginning "Neither, I think, did Congress anticipate that the Attorney General . . ." substitute for the language "would play dog in the manger and refuse or plead his inability to make up his mind" language to the effect "could discharge his statutory duty by simply stating that he had not been persuaded that a proposed change in election procedures would not have the forbidden discriminatory effect".

On page 3, in the sentence before the beginning of the new paragraph, delete "rather grandly".

These suggestions obviously do not go to the substance of what you say, and simply reflect a personal feeling on my part that I would like to avoid any implication of ad hominem criticism which does not advance the legal argument which you make.

Sincerely,

Mr. Justice White



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1973

Re: No. 72-75 - Georgia v. United States

Dear Byron:

Please join me.

Sincerely,

WR

Mr. Justice White

Copies to the Conference