

The Burger Court Opinion Writing Database

Kusper v. Pontikes

414 U.S. 51 (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

November 15, 1973

Re: 71-1631 - Kusper v. Pontikes

Dear Potter:

Please note that I concur in the result.

Regards,

WSR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 5, 1973

Dear Potter,

Please join me in your opinion
in 71-1631, KUSPER v. PONTIKES.

606

WILLIAM O. DOUGLAS

Mr. Justice Stewart
cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 17, 1973

Dear Potter:

I join your recirculation of
November 16th in 71-1631, Kusper v.
Pontikes.

W.W

William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 2, 1973

RE: No. 71-1631 Kusper v. Pontikes, et al.

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Mr. Justice Black
 ✓ Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

From: Stewart, J.

Oct 31 1973

Filed:

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 71-1631

Stanley T. Kusper, Jr., et al., On Appeal from the United
 Appellants, } States District Court for
 v. } the Northern District of
 Harriet G. Pontikes et al. } Illinois.

[November —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

Under § 7-43 (d) of the Illinois Election Code, a person is prohibited from voting in the primary election of a political party if he has voted in the primary of any other party within the preceding 23 months.¹ Appellee Harriet G. Pontikes is a qualified Chicago voter

¹ Ill. Rev. Stat., c. 46, § 7-43 provides, in pertinent part:
 "No person shall be entitled to vote at a primary:

"(d) If he has voted at a primary held under this Article 7 of another political party within a period of 23 calendar months next preceding the calendar month in which such primary is held: Provided, participation by a primary elector in a primary which, under the provisions of Section 7-2 of this Article, is a political party within a city, village or incorporated town or town only and entitled hereunder to make nominations for candidates for city, village or incorporated town offices only, and for no other office or offices, shall not disqualify such primary elector from participating in other primaries of his party: And, provided, that no qualified voter shall be precluded from participating in the primary of any purely city, village or incorporated town or town political party under the provisions of Section 7-2 of this Article by reason of such voter having voted at the primary of another political party within a period of 23 calendar months next preceding the calendar month in which he seeks to participate is held."

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

RE 28

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1631

Recirculated: 11/20/73

Recirculated: 11/20/73

Stanley T. Kusper, Jr., et al., On Appeal from the United
 Appellants. } States District Court for
 v. } the Northern District of
 Harriet G. Pontikes et al. Illinois.

[November —, 1973]

MR. JUSTICE STEWART delivered the opinion of the
 Court.

Under § 7-43 (d) of the Illinois Election Code, a
 person is prohibited from voting in the primary election
 of a political party if he has voted in the primary of
 any other party within the preceding 23 months.¹ Ap-
 pellee Harriet G. Pontikes is a qualified Chicago voter

¹ Ill. Rev. Stat., c. 46, § 7-43 provides, in pertinent part:
 "No person shall be entitled to vote at a primary:

"(d) If he has voted at a primary held under this Article 7 of
 another political party within a period of 23 calendar months next
 preceding the calendar month in which such primary is held: Pro-
 vided, participation by a primary elector in a primary which, under
 the provisions of Section 7-2 of this Article, is a political party
 within a city, village or incorporated town or town only and
 entitled hereunder to make nominations for candidates for city,
 village or incorporated town offices only, and for no other office or
 offices, shall not disqualify such primary elector from participating
 in other primaries of his party: And, provided, that no qualified
 voter shall be precluded from participating in the primary of any
 purely city, village or incorporated town or town political party
 under the provisions of Section 7-2 of this Article by reason of such
 voter having voted at the primary of another political party within
 a period of 23 calendar months next preceding the calendar month
 in which he seeks to participate is held."

RL 14710

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

4th DRAFT

From: Stewart, S.

SUPREME COURT OF THE UNITED STATES

No. 71-1631

Recirculated: NOV 16 1973

Stanley T. Kusper, Jr., et al., On Appeal from the United
Appellants. } States District Court for
v. } the Northern District of
Harriet G. Pontikes. } Illinois.

[November 19, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

Under § 7-43 (d) of the Illinois Election Code, a person is prohibited from voting in the primary election of a political party if he has voted in the primary of any other party within the preceding 23 months.¹ Appellee Harriet G. Pontikes is a qualified Chicago voter

¹ Ill. Rev. Stat., c. 46, § 7-43 provides, in pertinent part:
"No person shall be entitled to vote at a primary:

"(d) If he has voted at a primary held under this Article 7 of another political party within a period of 23 calendar months next preceding the calendar month in which such primary is held: Provided, participation by a primary elector in a primary which, under the provisions of Section 7-2 of this Article, is a political party within a city, village or incorporated town or town only and entitled hereunder to make nominations for candidates for city, village or incorporated town offices only, and for no other office or offices, shall not disqualify such primary elector from participating in other primaries of his party: And, provided, that no qualified voter shall be precluded from participating in the primary of any purely city, village or incorporated town or town political party under the provisions of Section 7-2 of this Article by reason of such voter having voted at the primary of another political party within a period of 23 calendar months next preceding the calendar month in which he seeks to participate is held."

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 7, 1973

Re: No. 71-1631 - Kusper v. Pontikes

Dear Potter:

I have not ignored this case but am not yet ready to come to rest. I would like to consider it along with the other election cases and also see what Bill Rehnquist has to say in dissent.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 15, 1973

Re: No. 71-1631 - Kusper v. Pontikes

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1973

Re: No. 71-1631 -- Kusper v. Pontikes

Dear Potter:

Please join me in your opinion.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

71-1631

Supreme Court of the United States

Memorandum

11-2, 1973

at 8th

Will you be writing
to my doctor in P.S.
primary election case?

I will if you want me to

George F. Gulliford

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 8, 1973

Dear Potter:

Re: No. 71-1631 - Kusper v. Pontikes

I, too, am not at rest in this case. I shall wait to see what Bill Rehnquist has to say in dissent. It may be that I shall also write.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 13, 1973

Re: No. 71-1631 - Kusper v. Pontikes

Dear Bill:

Please join me in your dissent circulated

November 8.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1/3/73

No. 71-1631

Recirculated:

Stanley T. Kusper, Jr., et al.,
Appellants. } On Appeal from the United
v. } States District Court for
Harriet G. Pontikes. } the Northern District of
Illinois.

[November —, 1973]

MR. JUSTICE BLACKMUN, dissenting.

The deprivation Mrs. Pontikes claims to have suffered, and which the Court today enshrouds with the mantle of unconstitutionality, is that she has been restrained by the Illinois statute from voting in *one* primary election of *one* party in the relatively minor context of a personal desire to undo an established party affiliation. Apart from this meager restraint, appellee Pontikes is fully free to associate with the party of her varying choice. She is, and has been, completely free to vote as she chooses in any general election. And she was free to vote in the primary of the party with which she had affiliated and voted in the preceding primary.

It is important, I think—and deserving of repeated emphasis—to note that this very limited statutory restriction on the appellee's exercise of her franchise is triggered solely by her personal and voluntary decision. This being so, the Court's conclusion seems to me to dilute an important First Amendment concept the vitality of which, in the long run, necessarily will suffer from strained and artificial applications of this kind. The mere fact that a state statute lightly brushes upon the right to vote and the right of association, important as these are, should not automatically result in invalidation. Prior case law does not require a conclusion of invalidity

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 1, 1973

No. 71-1631 Kusper v. Pontikes

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

1fp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 5, 1973

Re: No. 71-1631 - Kusper v. Pontikes

Dear Potter:

Some time this week I will attempt to circulate a dissent from your Court opinion in this case.

Sincerely,

WRH

Mr. Justice Stewart

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1631

At
 ✓ Mr. Justiceberman
 Mr. Justice Stewart
 Mr. Justice White
 Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell

Stanley T. Kusper, Jr., et al.,) On Appeal from the United
 Appellants.) States District Court for
 v.) the Northern District of
 Harriet G. Pontikes et al.) Illinois.

[November —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

The Court decides that the Illinois rule disqualifying a person from voting in the primary of one political party if he has voted in the primary of another political party during the preceding 23 months imposes an impermissible burden on Illinois voters' exercise of their right of free political association. In so doing it distinguishes *Rosario v. Rockefeller*, 410 U. S. 752, decided last Term. I find *Rosario* more difficult to distinguish than does the Court.

Section 7-43 of the Illinois Election Code provides that every person eligible to register to vote is entitled to vote at primary elections; it goes on to set out a number of exceptions to that general entitlement, including both persons disqualified under the 23-month rule challenged in this case and persons disqualified because they refuse to declare a party affiliation.¹ Section 7-44 re-

¹ § 7-43. Every person having resided in this State 6 months and in the precinct 30 days next preceding any primary therein who shall be a citizen of the United States above the age of 21 years, shall be entitled to vote at such primary.

"The following regulations shall be applicable to primaries:

"No person shall be entitled to vote at a primary:

"(a) Unless he declares his party affiliations as required by this Article;

"(b) Who shall have signed the petition for nomination of a