

The Burger Court Opinion Writing Database

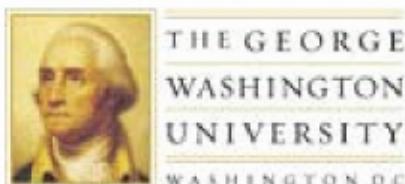
Letter Carriers v. Austin

418 U.S. 264 (1974)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



November 17, 1973

Re: 72-1180 - Old Dominion Branch No. 496,
Natl. Assoc. of Letter Carriers v. Austin

MEMORANDUM TO THE CONFERENCE:

I deferred my vote at Conference but now conclude that there is probably some form of pre-emption here and we probably must reverse.

Regards,

A handwritten signature consisting of the letters "W" and "B" joined together.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 22, 1974

Re: No. 72-1180 - Old Dominion Branch No. 496, et al
v. Austin, et al

Dear Thurgood:

I am not sure I can join your opinion as it now stands but perhaps some of the circulations will help me.

I will await further developments.

Regards,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1974

Re: 72-1180 - Old Dominion Branch #496 v. Austin

Dear Lewis:

Please join me in your dissenting opinion.

Regards,

W.B.

Mr. Justice Powell

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1180

Old Dominion Branch No. 496,
National Association of Letter Carriers, AFL-CIO,
et al., Appellants,
v.
Henry M. Austin et al.

On Appeal from the
Supreme Court of
Virginia,

[February —, 1974]

MR. JUSTICE DOUGLAS, concurring in the result.

As the Court states, this case calls upon us to determine the extent to which state libel laws may be used to penalize statements expressed in the course of a labor dispute. In this instance Virginia's libel laws were used to impose massive damages¹ upon a labor union for publicly expressing, during the heat of an organizational drive, its highly pejorative but not too surprising opinion of "scabs." I agree that this expression is protected and that the judgment below cannot stand. Unlike the Court, however, I do not view the task of reconciling the competing state and federal interests in this area as a difficult one, nor do I view the federal interest as merely a matter of federal labor policy. I think that such expression is constitutionally protected and I cannot agree that there might be situations "where the use of this writing or other similar rhetoric in a labor dispute could be actionable."

¹ The judgment in this case awarded damages of \$165,000 but the total figure might be larger since at least one other suit arising out of the same publication has been held in abeyance pending the outcome of this appeal.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 22, 1974

RE: No. 72-1180 Old Dominion Branch, etc.
v. Nat'l. Assn. Letter
Carriers

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 28, 1974

Re: No. 72-1180, Letter Carriers v. Austin

Dear Thurgood,

I am glad to join your opinion for the Court in
this case.

Sincerely yours,

P.S.
1/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1974

Re: No. 72-1180 - Old Dominion Branch No. 496
National Association of Letter Carriers v.
Austin

Dear Thurgood:

I am with you most of the way in this case. However, with respect to footnote 14, I would not like finally to say that knowing or reckless falsehoods could not be an unfair labor practice. Also, I am inclined to think that Gertz v. Robert Welch, like your reference to it and New York Times on page 16, overreads New York Times with respect to general applicability of a clear and convincing evidence standard in libel actions. See 376 U.S. 254, 285-286.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 28, 1974

Re: No. 72-1180 - Old Dominion Branch No. 496,
National Association of Letter Carriers
v. Austin

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

From: Marshall, J.

Circulated: JAN 17

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1180

Old Dominion Branch No. 496,
National Association of Letter Carriers, AFL-CIO,
et al., Appellants,
v.
Henry M. Austin et al.

On Appeal from the
Supreme Court of
Virginia.

[January —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

I

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491.¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR § 861 (1966-1970 Compilation), as amended, 3 CFR § 262 (1973). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are no

P. 7, 11-14, 22
Stylistic correction throughout.

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 72-1180

Recirculated: JAN 2

Old Dominion Branch No. 496.

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

"

Henry M. Austin et al

On Appeal from the
Supreme Court of
Virginia.

{ February —, 1974 }

Mr. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

¶

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491.¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR 861 (1966-1970 Compilation), as amended, 3 CFR 262 (1973). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are no

8.15.17.22
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackm...
Mr. Justice Powell
Mr. Justice Rehnqu...
Mr. Justice Marshall, J.

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 72-1180

Recirculated: JAN 24

Old Dominion Branch No. 496,

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

v.

Henry M. Austin et al.

On Appeal from the
Supreme Court of
Virginia.

[February —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

I

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491.¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR 861 (1966-1970 Compilation), as amended, 3 CFR 262 (1973). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are no

To: The Chief Justice
Mr. Justice Williams
Mr. Justice McLean
Mr. Justice Miller
Mr. Justice Smith
Mr. Justice Doherty
Mr. Justice McLean
Mr. Justice Doherty

S. 14

4th DRAFT

Ergonomics

Circumstances

Experiments and

SUPREME COURT OF THE UNITED STATES

No. 72-1180

Old Dominion Branch No. 496,)

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

H. M. A. G. 1

On Appeal from the
Supreme Court of
Virginia.

[February —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491.¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR 861 (1966-1970 Compilation), as amended, 3 CFR 262 (1973). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are no

8, 9, 12

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

5th DRAFT

From: Marshall, J.

Circulated:

Recirculated: MAR 1

SUPREME COURT OF THE UNITED STATES

No. 72-1180

Old Dominion Branch No. 496,
National Association of Letter Carriers, AFL-CIO,
et al., Appellants,
v.
Henry M. Austin et al.

On Appeal from the
Supreme Court of
Virginia.

[March — 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491,¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR 861 (1966-1970 Compilation), as amended, 3 CFR 262 (1973). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are not

Stylistic changes

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

6th DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: JUN 13 1974

No. 72-1180

Old Dominion Branch No. 496,
National Association of Letter Carriers, AFL-CIO,
et al., Appellants,
v.

Henry M. Austin et al.

On Appeal from the
Supreme Court of
Virginia.

[June —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court,

This case involves three state libel judgments imposing liability of \$165,000 on a labor union as a result of statements made in a union newsletter during a continuing organizational drive. The question presented is whether these libel judgments can be squared with the freedom of speech in labor disputes guaranteed under federal law.

I

Appellant Old Dominion Branch No. 496 is a local union affiliated with the appellant National Association of Letter Carriers, AFL-CIO. At all times relevant to this case, the Branch was recognized by postal authorities as the exclusive local collective-bargaining representative of letter carriers in the Richmond, Virginia area in accordance with § 10 of Executive Order 11491,¹ govern-

¹ 34 Fed. Reg. 17605 (1969), 3 CFR 861 (1966-1970 Compilation), as amended, 3 CFR 254 (1974). The Executive Order was promulgated on October 29, 1969, and became effective on January 1, 1970. It remains in effect with respect to most employees in the Executive Branch today. Postal employees, however, are no

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 29, 1974

Re: No. 72-1180 - Old Dominion Branch No. 496
v. Austin

Dear Thurgood:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 19, 1974

No. 72-1180 Old Dominion Branch v. Austin

Dear Thurgood:

As you know, I voted to affirm in the above case, as did Bill Rehnquist.

In due time I expect to circulate a brief dissent. As Jo and I hope to spend the next ten days in Florida, I will not be able to reach this until after our return.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1180

Prv. 1200 6/13/74
Circulated: 6/13/74

Old Dominion Branch No. 496,
National Association of Letter Carriers, AFL-CIO,
et al., Appellants,
v.
Henry M. Austin et al.

Recirculated:
On Appeal from the
Supreme Court of
Virginia.

[June —, 1974]

MR. JUSTICE POWELL, dissenting.

Today the Court extends the rule of *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), to encompass every defamatory statement made in a context that falls within the majority's expansive construction of the phrase "labor dispute." Because this decision appears to allow both unions and employers to defame individual workers with little or no risk of being held accountable for doing so, I dissent.

I

Executive Order 11491 establishes for certain federal employees a legal system for labor-management relations essentially similar to that provided employees in the private sector by the National Labor Relations Act (NLRA). The Court acknowledges that the two schemes are not identical but finds no persuasive reason to differentiate between them for the purpose of determining their pre-emptive impact on state libel law. With this much I agree.

The majority then concludes that the instant case is controlled by *Linn v. Plant Guard Workers*, 383 U. S. 53 (1966). In *Linn* the Court construed the NLRA to bar state libel judgments for defamatory statements made

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1974

Re: No. 72-1180 - Old Dominion v. Austin

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,

Wm

Mr. Justice Powell

Copies to the Conference