

# The Burger Court Opinion Writing Database

*Super Tire Engineering Co. v. McCorkle*  
416 U.S. 115 (1974)

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

March 5, 1974

Re: No. 72-1554 - Super Tire Engineering Company v.  
Lloyd W. McCorkle, et al

Dear Potter:

Please join me.

Regards,

WJB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 19, 1974

Re: 72-1554 - Super Tire Eng. Co. v. McCorkle

MEMORANDUM TO THE CONFERENCE:

As agreed at Conference, the above case has been assigned by Mr. Justice Douglas to Mr. Justice Blackmun.

Regards,

WRB

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 8, 1974

Re: 72-1554 - Super Tire Engineering Co. v. McCorkle

Dear Potter:

Please join me in your dissent.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 13, 1974

Dear Harry:

Please join me in your dissent  
in 72-1554, Super Tire v. McCorkle.

W<sup>O</sup>  
William O. Douglas

Mr. Justice Blackmun.

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 26, 1974

Dear Harry:

Please join me in your opinion for the  
Court in 72-1554, Super Tire Engineering  
Co. v. McCorkle.

3  
William O. Douglas

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.      March 14, 1974

RE: No. 72-1554 Super Tire Engineering Co.  
v. McCorkle, et al.

Dear Harry:

Please join me in your dissenting  
opinion in the above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

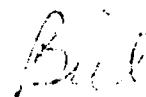
March 29, 1974

RE: No. 72-1554 - Super Tire Co. v. McCorkle

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 4, 1974

RE: No. 72-1554 Super Tire Engineering  
Co. v. McCorkle, et al.

Dear Harry:

I agree with your second draft in  
the above.

Sincerely,

Mr. Justice Blackmun

cc: The Conference

For: The Office of the  
Chairman of the House Select  
Committee on Small Business  
1. Rep. John C. Wren  
2. Rep. John C. Connelly  
3. Rep. John C. Connelly  
4. Rep. John C. Connelly  
5. Rep. John C. Connelly  
6. Rep. John C. Connelly  
7. Rep. John C. Connelly  
8. Rep. John C. Connelly  
9. Rep. John C. Connelly

1st DRAFT

SUPREME COURT OF THE UNITED STATES

February 15, 1974  
Circulated:

PER 15 1974

No. 72-1554

Recirculated:

Super Tire Engineering  
Company et al. Petitioners  
v.  
Lloyd W. McCorkle et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[February —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

On May 14, 1971, the production and maintenance employees of the petitioners, Super Tire Engineering Company and Supercap Corporation, commenced an economic strike in support of their demands for a new collective-bargaining agreement.<sup>1</sup> About four weeks later, on June 10, 1971, the petitioners filed a complaint in the United States District Court for the District of New Jersey, alleging that a number of striking employees were receiving public assistance under state welfare programs.<sup>2</sup> Their complaint sought declaratory and injunc-

<sup>1</sup> Super Tire Engineering Company and Supercap Corporation are New Jersey corporations with their principal places of business in Camden; they are engaged in the general business of manufacturing, selling, and servicing truck tires. A three-year contract between the petitioners and Teamsters Local Union No. 676, the certified collective-bargaining representative for the corporations' production and maintenance employees, had expired on May 14, 1971.

<sup>2</sup> Specifically, the petitioners claimed that the striking workers were receiving benefits under two New Jersey welfare programs: New Jersey General Assistance, N. J. Stat. Ann. 44:8-107 *et seq.*, a state program, and Aid for Dependent Children (AFDC), N. J. Stat. Ann. 44:10-1 *et seq.*, a joint state-federal program created

To: The Whitehead family  
Mr. & Mrs. Whitehead  
1500 1/2 15th Street  
NW • Washington, D.C.  
Mr. & Mrs. Whitehead  
1500 1/2 15th Street  
NW • Washington, D.C.  
Mr. & Mrs. Whitehead  
1500 1/2 15th Street  
NW • Washington, D.C.  
Mr. & Mrs. Whitehead  
1500 1/2 15th Street  
NW • Washington, D.C.  
Mr. & Mrs. Whitehead  
1500 1/2 15th Street  
NW • Washington, D.C.

2nd DRAFT

From: Svenn, S.

## STATES Circular 271

No. 72-1554

Recirculated:

No. 72-1554 Recircu

Super Tire Engineering Company et al., Petitioners, *v.* Lloyd W. McCorkle et al. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

On May 14, 1971, the production and maintenance employees of the petitioners, Super Tire Engineering Company and Supercap Corporation, commenced an economic strike in support of their demands for a new collective-bargaining agreement.<sup>1</sup> About four weeks later, on June 10, 1971, the petitioners filed a complaint in the United States District Court for the District of New Jersey, alleging that a number of striking employees were receiving public assistance under state welfare programs.<sup>2</sup> Their complaint sought declaratory and injunc-

<sup>1</sup> Super Tire Engineering Company and Supercap Corporation are New Jersey corporations with their principal places of business in Camden; they are engaged in the general business of manufacturing, selling, and servicing truck tires. A three-year contract between the petitioners and Teamsters Local Union No. 676, the certified collective-bargaining representative for the corporations' production and maintenance employees, had expired on May 14, 1971.

<sup>2</sup> Specifically, the petitioners claimed that the striking workers were receiving benefits under two New Jersey welfare programs: New Jersey General Assistance, N. J. Stat. Ann. 44:8-107 *et seq.*, a state program, and Aid for Dependent Children (AFDC), N. J. Stat. Ann. 44:10-1 *et seq.*, a joint state-federal program created

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 72-1554

Circulated:

Recirculated:

Super Tire Engineering Company et al., Petitioners, v. Lloyd W. McCorkle et al.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April 17, 1974]

**MR. JUSTICE STEWART, dissenting**

The Court today reverses the Court of Appeals and holds that this case is not moot, despite the fact that the underlying labor dispute that gave rise to the petitioners' claims ended even before the parties made their initial appearance in the District Court. I think this holding ignores the limitations placed upon the federal judiciary by Article III of the Constitution and disregards the clear teachings of prior cases. Accordingly, I dissent.

This Court has repeatedly recognized that the inability of the federal judiciary "to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends on the existence of a case or controversy." *Liner v. Jafco, Inc.*, 375 U. S. 301, 306, n. 3. See also *North Carolina v. Rice*, 404 U. S. 244, 246; *Powell v. McCormack*, 395 U. S. 486, 496 n. 7; *Sibron v. New York*, 392 U. S. 40, 50 n. 8. Since Article III courts are precluded from issuing advisory opinions, *Hayburn's Case*, 2 Dall. 409; *Muskrat v. United States*, 219 U. S. 346, it necessarily follows that they are impotent "to decide questions that cannot affect the rights of litigants in the case before

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Recirculated:

9

No. 72-1554

Super Tire Engineering Company et al., Petitioners, v. Lloyd W. McCorkle et al. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1974]

MR. JUSTICE STEWART, with whom THE CHIEF JUSTICE,  
MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST join,  
dissenting.

The Court today reverses the Court of Appeals and holds that this case is not moot, despite the fact that the underlying labor dispute that gave rise to the petitioners' claims ended even before the parties made their initial appearance in the District Court. I think this holding ignores the limitations placed upon the federal judiciary by Article III of the Constitution and disregards the clear teachings of prior cases. Accordingly, I dissent.

This Court has repeatedly recognized that the inability of the federal judiciary "to review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends on the existence of a case or controversy." *Liner v. Jafco, Inc.*, 375 U. S. 301, 306, n. 3. See also *North Carolina v. Rice*, 404 U. S. 244, 246; *Powell v. McCormack*, 395 U. S. 486, 496 n. 7; *Sibron v. New York*, 392 U. S. 40, 50 n. 8. Since Article III courts are precluded from issuing advisory opinions, *Hayburn's Case*, 2 Dall. 409; *Muskrat v. United States*, 219 U. S. 346, it necessarily follows that they are impotent "to decide questions that cannot affect the rights of litigants in the case before

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 14, 1974

Re: No. 72-1554 - Super Tire Engineering Co.  
v. McCorkle

Dear Harry:

Your dissenting opinion expresses my views  
in this case. Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 30, 1974

Re: No. 72-1554 - Super Tire Engineering Co. v.  
McCorkle

Dear Harry:

Please join me.

Sincerely,

*Byron*

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 20, 1974

Re: No. 72-1554 -- Super Tire Engineering Company v.  
McCorkle et al.

Dear Potter:

I shall wait for the dissent before making up  
my mind.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 13, 1974

Re: No. 72-1554 -- Super Tire Engineering Company v.  
McCorkle

Dear Harry:

While I voted the other way, I am persuaded  
by your opinion.

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 1, 1974

Re: No. 72-1554 -- Super Tire Engineering Co. v.  
McCorkle

Dear Harry:

Please join me.

Sincerely,



T. M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 19, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1554 - Super Tire v. McCorkle

In due course I shall attempt a dissent in  
this case.

*HAB.*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1554

Circulated: 3/3/74

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

Super Tire Engineering  
Company et al.,  
Petitioners,  
v.  
Lloyd W. McCorkle et al.]

On Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit.

[March —, 1974]

MR. JUSTICE BLACKMUN, dissenting

It is easy and convenient to conclude, as the Court does, that this controversy has become moot because a particular economic strike, which had begun on May 14, 1971, came to an end upon the execution of a new collective-bargaining agreement and the employees' return to work in late June. The Court's conclusion may very well be appropriate with respect to one, but only one, aspect of the lawsuit, that is, the request for injunctive relief.

The petitioners, however, from the very beginning, have sought *declaratory* relief, under 28 U. S. C. §§ 2201 and 2202, as well as an injunction. This being so, the facts clearly provide full and complete satisfaction of the requirement of the Constitution's Art. III, § 2, that a case or controversy exist between the parties. Unlike the situations that prevailed in *Harris v. Battle*, 348 U. S. 803 (1954), and in *Oil Workers Unions v. Missouri*, 361 U. S. 363 (1960), on which the Court rests its conclusion of mootness, the challenged *governmental activity* in the present case is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 28, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1554 - Super Tire Engineering Co.  
v. McCorkle

The fourth item on Mr. Ginty's memorandum of today relating to Chambers Actions of the Chief Justice concerns the motion of the petitioners for leave to file a supplemental brief. Mr. Ginty recommends that that motion be granted.

The "recast" proposed opinion is being circulated this afternoon. It does not reach the merits. This is on the assumption that, despite the possible existence of power here to reach the merits, this aspect of the case should be explored in the first instance by the Court of Appeals. I assume, but do not know, that the conference will favor this approach rather than pass on the merits at this time.

The petitioner's supplemental brief in part concerns the merits. There is a response, filed today, by the New Jersey respondents. This response, of course, is not mentioned in Mr. Ginty's memorandum.

I have no objection to the granting of the motion for leave to file the supplemental brief. It has no effect on the opinion as recast. I circulate this note, however, so that all may be aware of the thrust of these additional documents that are presented to us.

*H. A. B.*

Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

3/28/74  
No. 72-1554

Super Tire Engineering Company et al., Petitioners,  
v.  
Lloyd W. McCorkle et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[April —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In New Jersey, workers engaged in an economic strike are eligible for public assistance through state welfare programs. Employers whose plants were struck instituted this suit for injunctive and declaratory relief against such eligibility. Before the case was tried the labor dispute was settled and the strike came to an end. The question presented is whether a "case" or "controversy" still exists, within the meaning of Art. III, § 2, of the Constitution, and of the Declaratory Judgment Act, 28 U. S. C. §§ 2201-2202.

I

A collective-bargaining agreement between Super Tire Engineering Company and Supercap Corporation, affiliated New Jersey corporations,<sup>1</sup> and Teamsters Local Union No. 676, the certified collective-bargaining representative for the two corporations' production and main-

<sup>1</sup> Super Tire Engineering Company is engaged in the business of truck tire sales and service and the manufacture and sale of industrial polyurethane tires and wheels. Supercap Corporation is engaged in the business of truck tire recapping and repairing.

pp. 6 & 7

Justices:  
Chief Justice  
Justices Marshall  
Justice Powell  
Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Recalled:

Recirculated: 4/3/74

No. 72-1554

Super Tire Engineering  
Company et al., Petitioners,  
v.  
Lloyd W. McCorkle et al.

On Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit.

[April —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In New Jersey, workers engaged in an economic strike are eligible for public assistance through state welfare programs. Employers whose plants were struck instituted this suit for injunctive and declaratory relief against such eligibility. Before the case was tried, the labor dispute was settled and the strike came to an end. The question presented is whether a "case" or "controversy" still exists, within the meaning of Art. III, § 2, of the Constitution, and of the Declaratory Judgment Act, 28 U. S. C. §§ 2201-2202.

I

A collective-bargaining agreement between Super Tire Engineering Company and Supercap Corporation, affiliated New Jersey corporations,<sup>1</sup> and Teamsters Local Union No. 676, the certified collective-bargaining representative for the two corporations' production and main-

<sup>1</sup> Super Tire Engineering Company is engaged in the business of truck tire sales and service and the manufacture and sale of industrial polyurethane tires and wheels. Supercap Corporation is engaged in the business of truck tire recapping and repairing.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 18, 1974

No. 72-1554 Super Tire v. McCorkle

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 4, 1974

No. 72-1554 Super Tire v. McCorkle

Dear Potter:

Please join me in your dissent.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 25, 1974

Re: No. 72-1554 - Super Tire v. McCorkle

Dear Potter:

Please join me.

Sincerely,

*WR*

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 4, 1974

Re: No. 72-1554 - Super Tire v. McCorkle

Dear Potter:

Please join me in your dissent in this case.

Sincerely,

W.W.

Mr. Justice Stewart

Copies to the Conference