

The Burger Court Opinion Writing Database

Cousins v. Wigoda

419 U.S. 477 (1975)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

January 8, 1975

Re: 73-1106 - Cousins v. Wigoda

Dear Bill:

I join in your concurring opinion circulated
January 2, 1975, along with Potter.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 18, 1974

Dear Bill:

In 73-1106, COUSINS v. WIGODA
please join me in your opinion.

WOD/Sonora

William O. Douglas

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
IN THE LIBRARY OF CONGRESS

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

1st DRAFT

From: Brennan, J.

Circulated: 12/18

Recirculated: _____

No. 73-1106

William Cousins et al.,
Petitioners,
v.
Paul T. Wigoda et al. } On Writ of Certiorari to the
Appellate Court of Illinois
for the First District.

[December __, 1974]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

At the March 1972 Illinois primary election, Chicago's Democratic voters elected the 59 respondents ("Wigoda delegates") as delegates to the 1972 Democratic National Convention to be held in July 1972 in Miami, Florida. Some of the 59 petitioners ("Cousins delegates") challenged the seating of the Wigoda delegates before the Credentials Committee of the National Democratic Party on the ground, among others, that the slate-making procedures under which the Wigoda delegates were selected violated Party guidelines incorporated in the Call of the Convention. On June 30, 1972, the Credentials Committee sustained the Findings and Report of a Hearing Officer that the Wigoda delegates had been chosen in violation of the guidelines,¹ and also adopted the Hearing Offi-

¹ The Hearing Officer found violations of Guidelines A-1 (minority group participation), A-2 (women and youth participation), A-5 (existence of party rules), C-1 (adequate public notice of party affairs), C-4 (timing of delegate selection), and C-6 (slate-making). Findings and Report of Cecil F. Poole, Hearing Officer (June 25, 1972). Guideline C-6, relating to slate-making, was as follows:

“C-6 Slate-making

"In mandating a full and meaningful opportunity to participate in the delegate selection process, the 1968 Convention meant to prohibit

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1974

No. 73-1106, Cousins v. Wigoda

Dear Bill,

Please add my name to your
concurring opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1974

Re: No. 73-1106 - Cousins v. Wigoda

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 19, 1974

Re: No. 73-1106 -- William Cousins et al. v. Paul T. Wigoda

Dear Bill:

Please join me in your opinion.

Sincerely,

J.M.
T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 9, 1975

Re: No. 73-1106 - Cousins v. Wigoda

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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 Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-1106

Circulated: JAN 8 1974

William Cousins et al., Petitioners, } On Writ of Certiorari to the Recirculated:
v. } Appellate Court of Illinois
Paul T. Wigoda et al. } for the First District.

[January —, 1975]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I agree that the National Convention of the Democratic Party could not be compelled to seat respondents at its national convention. I disagree, however, that the Illinois courts are without power to enjoin petitioners from sitting *as delegates representing districts in that State*. To this limited extent, I dissent.

The Illinois Legislature has enacted a comprehensive scheme for regulating the election of delegates to national party conventions, Ill. Rev. Stat. c. 46, § 7-1 *et seq.*, including a means by which a defeated candidate may challenge the election. *Id.*, at § 7-63. Respondents were duly elected in primaries held in various election districts in the city of Chicago. Petitioners, for the most part, were people who had lost in these primaries and who eventually were selected in private caucuses as a challenge delegation. They made no challenge under state law but rather they successfully unseated respondents at the Convention and had themselves seated as delegates representing the districts in which the ousted delegates had been elected.

The Illinois Appellate Court concluded that the Democratic Party

“... most certainly could not seat people of their choice and force them upon the people of Illinois

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 19, 1974

Re: No. 73-1106 - Cousins v. Wigoda

Dear Bill:

I don't think I can join your opinion in this case, because of what seems to me to be its rather clear intimation that Congress does have authority to regulate the national political conventions, and that even unregulated national political conventions are subject to the commands of the First and Fourteenth Amendments. Although you say you leave these questions open, it seems to me that the material you cite in the footnotes, together with your treatment of the per curiam in O'Brien v. Brown, 409 U.S. 1, at pages 12 and 13 of the draft, rather clearly foreshadows the decision on these points. I assume that you intended it that way, and therefore will write a separate opinion concurring in the result.

Sincerely,

Wm

Mr. Justice Brennan

Wm Brennan
8C974

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Rehnquist, J.

No. 73-1106

Scanned: 12-24-77

William Cousins et al.,
Petitioners, } On Writ of Certiorari to the
v. } Appellate Court of Illinois
Paul T. Wigoda et al. } for the First District.

[January —, 1975]

MR. JUSTICE REHNQUIST, concurring in the result.

I agree with the Court that the members of political parties enjoy a constitutionally protected right of freedom of association secured by the First and Fourteenth Amendments to the United States Constitution. The right of members of a political party to gather in a national political convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association which has been established in earlier cases decided by the Court. *NAACP v. Alabama*, 357 U. S. 449 (1958); *Bates v. City of Little Rock*, 361 U. S. 516, 523 (1960); *Healy v. James*, 408 U. S. 169 (1972).

I also agree that the interest of the State of Illinois in protecting its electoral processes for primary delegate selection is not sufficient to authorize a flat prohibition against petitioners' efforts to have the 1972 National Democratic Convention seat them as party delegates from Illinois. The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived. Beside it, the sort of "subtle governmental interference" which was referred to in *Bates v. City of Little Rock*, *supra*, pales. I would by no means downplay the legitimacy of the interest of the State in assur-

STYLISTIC CHANGES THROUGHOUT

P.2

2nd DRAFT

The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

FROM: REHNQUIST, J.

No. 73-1106

Circulated: 12-24

William Cousins et al.,
Petitioners,
v.
Paul T. Wigoda et al.

On Writ of Certiorari to the
Appellate Court of Illinois
for the First District.

Received: 12-26

[January —, 1975]

MR. JUSTICE REHNQUIST, concurring in the result.

I agree with the Court that the members of political parties enjoy a constitutionally protected right of freedom of association secured by the First and Fourteenth Amendments to the United States Constitution. The right of members of a political party to gather in a national political convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association which has been established in earlier cases decided by the Court. *NAACP v. Alabama*, 357 U. S. 449 (1958); *Bates v. City of Little Rock*, 361 U. S. 516, 523 (1960); *Healy v. James*, 408 U. S. 169 (1972).

I also agree that the interest of the State of Illinois in protecting its electoral processes for primary delegate selection is not sufficient to authorize a flat prohibition against petitioners' efforts to have the 1972 National Democratic Convention seat them as party delegates from Illinois. The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived. Beside it, the sort of "subtle governmental interference" which was referred to in *Bates v. City of Little Rock*, *supra*, pales. I would by no means downplay the legitimacy of the interest of the State in assur-

9.5
S

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

3rd DRAFT

From: Rehnquist, J.

Circulated: 12-24

Recirculated: 12-27

SUPREME COURT OF THE UNITED STATES

No. 73-1106

William Cousins et al.,
Petitioners,
v.
Paul T. Wigoda et al. } On Writ of Certiorari to the
Appellate Court of Illinois
for the First District.

[January —, 1975]

MR. JUSTICE REHNQUIST, concurring in the result.

I agree with the Court that the members of political parties enjoy a constitutionally protected right of freedom of association secured by the First and Fourteenth Amendments to the United States Constitution. The right of members of a political party to gather in a national political convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association which has been established in earlier cases decided by the Court. *NAACP v. Alabama*, 357 U. S. 449 (1958); *Bates v. City of Little Rock*, 361 U. S. 516, 523 (1960); *Healy v. James*, 408 U. S. 169 (1972).

I also agree that the interest of the State of Illinois in protecting its electoral processes for primary delegate selection is not sufficient to authorize a flat prohibition against petitioners' efforts to have the 1972 National Democratic Convention seat them as party delegates from Illinois. The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived. Beside it, the sort of "subtle governmental interference" which was referred to in *Bates v. City of Little Rock*, *supra*, pales. I would by no means downplay the legitimacy of the interest of the State in assur-

O. Doug
Wm. 12/24

P. 2, 4, 5

To: The ~~Chairman~~
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

Circulated: 12-24

No. 73-1106

Recirculated: 1-2

William Cousins et al.,
Petitioners,
v.
Paul T. Wigoda et al. } On Writ of Certiorari to the
Appellate Court of Illinois
for the First District.

[January —, 1975]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE STEWART joins, concurring in the result.

I agree with the Court that the members of political parties enjoy a constitutionally protected right of freedom of association secured by the First and Fourteenth Amendments to the United States Constitution. The right of members of a political party to gather in a national political convention in order to formulate proposed programs and nominate candidates for political office is at the very heart of the freedom of assembly and association which has been established in earlier cases decided by the Court. *NAACP v. Alabama*, 357 U. S. 449 (1958); *Bates v. City of Little Rock*, 361 U. S. 516, 523 (1960); *Healy v. James*, 408 U. S. 169 (1972).

I also agree that the interest of the State of Illinois in protecting its electoral processes for primary delegate selection is not sufficient to authorize a flat prohibition against petitioners' efforts to have the 1972 National Democratic Convention seat them as party delegates from Illinois. The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived. Beside it, the sort of "subtle governmental interference" which was referred to in *Bates v. City of Little Rock*, *supra*, pales. I would by no means downplay the legitimacy of the interest of the State in assur-