

# The Burger Court Opinion Writing Database

## *Harris County Commissioners Court v. Moore*

420 U.S. 77 (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 7, 1975

PERSONAL

Re: 73-1475 - Harris County Commissioners  
Court v. Moore

Dear Thurgood:

It seems to me your note 8, page 8 is unnecessary to the opinion or the result and it is inconsistent with prior utterances of the Court. If you can see your way clear to deleting note 8, I can join. I send this note only to you at this stage.

Regards,

WLB

Mr. Justice Marshall

COLLECTION

THE MANUSCRIPT DIVISION

UNITED STATES OF AMERICA

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 9, 1975

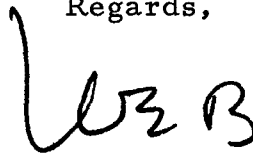
PERSONAL

Re: No. 73-1475 - Harris County Commissioners Court v. Moore

Dear Thurgood:

Thank you. I can readily join your changed  
footnote.

Regards,



Mr. Justice Marshall

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 9, 1975

Re: No. 73-1475 - Harris County Commissioners Court  
v. Moore

Dear Thurgood:

Please join me.

Regards,

WBS

Mr. Justice Marshall

Copies to the Conference

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U.S. DEPARTMENT OF JUSTICE

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas; J.

No. 73-1475

Circulates: 12-17

Harris County Commissioners } On Appeal from  
Court et al., Appellants, } United States District  
v. } Court for the Southern  
Richard E. Moore et al. } District of Texas.

[December —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The principle of abstention—judicially created by *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496—promises to become a serious barrier to the assertion by federal courts of the jurisdiction Congress has bestowed on them. In the present case suit was started in 1973 in the District Court, its decision being rendered January 30, 1974. The term of office of the three justices of the peace who were ousted expires December 31, 1974, that of the two constables, December 31, 1976. After being brought all the way here by the State that has ousted them from office they are now told their federal suit is dismissed and that they must start litigation anew in the state courts. They would necessarily have to be very rich office holders to pay the expense of this long-drawn out litigation or else be financed by some foundation.

The three judges who made up the District Court in this case were Thomas G. Gee, John V. Singleton, Jr., Carl O. Bue, Jr., all named from Texas, all versed in the idiosyncrasies of Texas law. A state agency, acting with full authority of state law, has ousted these elected officials. By remitting them to a state court we now leave them without an effective remedy in view of the short terms of office that are involved. I said in *Harrison v. NAACP*, 360 U. S. 167, 184 (dissenting):

"We need not—we should not—give deference to

STYLING CHANGES THROUGHOUT.  
SEE PAGE 3

Mr. Justice  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1475

Circulate: \_\_\_\_\_

Recirculate: \_\_\_\_\_

Harris County Commissioners } On Appeal from the  
Court et al., Appellants, } United States District  
v. } Court for the Southern  
Richard E. Moore et al. } District of Texas.

[February —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

The principle of abstention—judicially created by *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496 (1941)—promises to become a serious barrier to the assertion by federal courts of the jurisdiction Congress has bestowed on them. In the present case, suit was started in 1973 in the District Court, which rendered its judgment January 30, 1974. The term of office of the three justices of the peace who were ousted expired December 31, 1974, that of the two constables, December 31, 1976. After being brought all the way here by the State that has ousted them from office, they are now told that their federal suit is dismissed and that they must start litigation anew in the state courts. They would necessarily have to be very rich office holders—or else be financed by some foundation—to be able to pay the expense of this long, drawn-out litigation.

The three judges who made up the District Court in this case were Thomas G. Gee, John V. Singleton, Jr., and Carl O. Bue, Jr., all named from Texas, all versed in the idiosyncrasies of Texas law. A state agency, acting with full authority of state law,\* has ousted these elected offi-

\*Tex. Civ. Stat. Art. 2351½ (c) provides:

"When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or ap-

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 20, 1974

RE: No. 73-1475 Harris County Commrs. Ct. v. Moore

Dear Thurgood:

I agree.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 16, 1974

No. 73-1475, Harris Cty Comm'rs Ct. v. Moore

Dear Thurgood,

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

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 16, 1974

Re: No. 73-1475 - Harris County Comm'rs Court  
v. Moore

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Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

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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

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: DEC 12 1974

No. 73-1475

Recirculated:

Harris County Commissioners } On Appeal from the  
Court et al., Appellants. } United States District  
v. } Court for the Southern  
Richard E. Moore et al. } District of Texas.

[December —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The plaintiffs brought this action to challenge a plan redistricting the justice of the peace precincts in Harris County, Texas. Because the plan provided for consolidation of several precincts, three former justices of the peace and two former constables lost their jobs. These five officials, along with two voters from the defunct precincts, sought to enjoin implementation of the redistricting plan on the ground that the Texas statute providing for their removal from office at the time of redistricting denied them the equal protection of the laws. The three-judge District Court granted relief, declaring the statute unconstitutional and enjoining the redistricting. The order of the District Court was stayed by MR. JUSTICE POWELL. We denied a motion to vacate the stay, 415 U. S. 905, and subsequently noted probable jurisdiction, 417 U. S. 928. We reverse and remand to the District Court with instructions to dismiss the complaint without prejudice.

I

Under Texas law, the Commissioners Court is the general governing body of each county; one of its duties is to divide the county into precincts for the election of

Oct 74  
Wm Doyle

— 5, 7, 12

9

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 73-1475

Recirculated: DEC 19 1974

Harris County Commissioners } On Appeal from the  
Court et al., Appellants, } United States District  
v. } Court for the Southern  
Richard E. Moore et al. } District of Texas.

[December —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The appellees brought this action to challenge a plan redistricting the justice of the peace precincts in Harris County, Texas. Because the plan provided for consolidation of several precincts, three former justices of the peace and two former constables lost their jobs. These five officials, along with two voters from the defunct precincts, sought to enjoin implementation of the redistricting plan on the ground that the Texas statute providing for their removal from office at the time of redistricting denied them the equal protection of the laws. The three-judge District Court granted relief, declaring the statute unconstitutional and enjoining the redistricting. The order of the District Court was stayed by MR. JUSTICE POWELL. We denied a motion to vacate the stay, 415 U. S. 905, and subsequently noted probable jurisdiction, 417 U. S. 928. We reverse and remand to the District Court with instructions to dismiss the complaint without prejudice.

I

Under Texas law, the Commissioners Court is the general governing body of each county; one of its duties is to divide the county into precincts for the election of

Wm. Douglas  
or 11



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 7, 1975

Re: No. 73-1475 -- Harris County Commissioners Court v. Moore

Dear Chief:

In light of your suggestion, I am willing to revise footnote 8 of Harris County Comm'rs Court v. Moore. However, I think it would be unwise not to deal with the case of Wisconsin v. Constantineau, where we declined to order abstention in spite of the fact that there was apparently a possible remedy in the Wisconsin Constitution. I propose a revised footnote 8 that would read like this:

8. In Wisconsin v. Constantineau, 400 U.S. 433 (1971), we declined to order abstention where the federal due process claim was not complicated by an unresolved state law question, even though the plaintiffs might have sought relief under a similar provision of the state constitution. But where the challenged statute is part of an integrated scheme of related constitutional provisions, statutes and regulations, and where the scheme as a whole calls for clarifying interpretation by the state courts, we have regularly required the District Courts to abstain. See Reetz v. Bozanich, 397 U.S. 82 (1970); City of Meridian v. Southern Bell Tel. & Tel. Co., 358 U.S. 639 (1959).

If you can agree with this revision, I will circulate it in this form.

Sincerely,

*T.M.*

T.M.

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U.S. DEPARTMENT OF JUSTICE

JAN 10 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1475

Harris County Commissioners	} On Appeal from the
Court et al., Appellants,	
v.	
Richard E. Moore et al.	United States District Court for the Southern District of Texas.

[December —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The appellees brought this action to challenge a plan redistricting the justice of the peace precincts in Harris County, Texas. Because the plan provided for consolidation of several precincts, three former justices of the peace and two former constables lost their jobs. These five officials, along with two voters from the defunct precincts, sought to enjoin implementation of the redistricting plan on the ground that the Texas statute providing for their removal from office at the time of redistricting denied them the equal protection of the laws. The three-judge District Court granted relief, declaring the statute unconstitutional and enjoining the redistricting. The order of the District Court was stayed by MR. JUSTICE POWELL. We denied a motion to vacate the stay, 415 U. S. 905, and subsequently noted probable jurisdiction, 417 U. S. 928. We reverse and remand to the District Court with instructions to dismiss the complaint without prejudice.

I

Under Texas law, the Commissioners Court is the general governing body of each county; one of its duties is to divide the county into precincts for the election of

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U. S. SUPREME COURT

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 16, 1974

Re: No. 73-1475 - Harris County Commissioners  
Court v. Moore

Dear Thurgood:

Please join me.

Sincerely,

*Harry*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 16, 1974

No. 73-1475 Harris County Comm'rs Court  
v. Moore

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Dear Thurgood:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

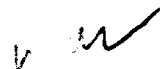
December 17, 1974

Re: 73-1475 - Harris County Commissioners Court v. Moore

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

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