The Burger Court Opinion Writing Database

Hill v. Stone

421 U.S. 289 (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 27, 1975

PERSONAL

Re: 73-1723 - Hill v. Stone

MEMORANDUM TO THE CONFERENCE:

No assignment of this case is now being made. By the end of the discussion a suggestion emerged that a remand might be in order to clarify whether in fact the Texas statute operated to keep anyone from voting.

A little time may lead to a sensible solution.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

January 29, 1975

Re: No. 73-1723 - Hill v. Stone

MEMORANDUM TO THE CONFERENCE:

I have Thurgood's January 24 memorandum on the above case and find much to agree with. However, my view has been that in the present posture this is a "non-case" chiefly due to the casual and careless way the 3-judge court dealt with it. It is simply another example of the lack of attention given to these cases by 3-judge courts. I hope, whatever the disposition, we can "rap some knuckles" -- gently, of course.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

May 1, 1975

Re: 73-1723 - Hill v. Stone

Dear Bill:

I am so heartily in agreement with your dissent that I take it "out of order" and join it at once.

If in fact -- and on this record no one can know -- the Texas laws operate as an obstacle I believe we would have a unanimous opinion.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

CHAMBERS OF
THE CHIEF JUSTICE

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

May 9, 1975

MEMORANDUM TO THE CONFERENCE:

As agreed the following cases will be announced on Monday, May 12:

73-1723 - Hill v. Stone - Mr. Justice Marshall

73-1977 - Alyeska Pipeline Service Co. v. The Wilderness Society - Mr. Justice White

73-1531 - Johnson v. Mississippi - Mr. Justice White

Regards

WEB

cc: Mr. Cornio

Wm. Douglas 00 74

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1975

RE: No. 73-1723 Hill v. Stone

Dear Thurgood:

I was the other way but you persuade me. I'm glad to join.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 7, 1975

RE: No. 73-1723 Hill v. Stone

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 31, 1975

No. 73-1723 - Hill v. Stone

Dear Bill,

My vote, as you know, was and is to reverse the judgment in this case. I think, however, that there is considerable merit in what you have to say in your memorandum of January 30. Accordingly, I would be willing to join a Per Curiam written along the lines you suggest if that disposition attracted the votes of four others.

Sincerely yours,

P.S.
1.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 5, 1975

No. 73-1723 - Hill v. Stone

Dear Bill,

I should appreciate your adding my name to your dissenting 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

April 7, 1975

Re: No. 73-1723 - Hill v. Stone

Dear Thurgood:

Please join me.

Sincerely,

Byron

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 24 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1723

John L. Hill, Attorney General of Texas, Appellant, *v.* Michael L. Stone et al. | On Appeal from the United States District Court for the Northern District of Texas,

[February —, 1975]

Memorandum of MR. JUSTICE MARSHALL.

This case requires us once again to consider the constitutionality of a classification restricting the right to vote in a local election.

Appellees, residents of Ft. Worth, Texas, brought this action to challenge the state and city laws limiting the franchise in city bond elections to persons who have made available for taxation some real, mixed, or personal property. A three-judge District Court held that this restriction on suffrage did not serve any compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment. *Stone* v. *Stovall*, 377 F. Supp. 1016 (ND Tex. 1974). We granted a partial stay of the District Court's order pending disposition of the appeal. 416 U. S. 963. We subsequently noted probable jurisdiction. 419 U. S. —.

I

The Texas Constitution provides that in all municipal elections "to determine expenditure of money or assumption of debt," only those who pay taxes on property in the city are eligible to vote. Tex. Const. Art. 6, § 3. In addition, it directs that in any election held "for the

Mr. Doyle
Oct 74

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 31, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1723 -- Hill v. Stone

In response to Bill Rehnquist's memo, I wanted to clarify one aspect of my proposed treatment of this case. I did not mean to suggest that the case should be decided on the basis of the concessions made by counsel at argument. The clarity or extent of the concessions would not need to be explored if the case were affirmed on roughly the grounds stated in parts I and II of my memorandum. I mentioned the concessions in part III only by way of explaining why it appeared to me that a remand in this case would not achieve very much.

I remain convinced that a remand would not be of any real value. Since, as I indicated in my first memo, our cases have not held that only property-related classifications are suspect, it would not advance the analysis to have the parties place in the record the fact that real property and business personalty is "rendered" automatically in Fort Worth, while non-business personal property is not.

I gather that Bill would go farther than this and require a showing on remand that the classification not only discrimina[illegible] on the basis of property ownership, but that it results in the absolute disfranchisement of some class of voters (p. 2, secon[illegible] full paragraph of WHR's memo). On this view of the case, ordering a remand would be tantamount to outright reversal. Despite Judge Thornberry's off-hand assumption to the contrar[illegible] (which was plainly not necessary to his decision), I think it is beyond cavil that the plaintiffs will be unable to produce any

Wm. Douglas 2/1/74

potential voter who has no property of any kind as is therefore absolutely barred from participation by the rendering requirement. To remand this case with the suggestion that the plaintiffs must prove that some voters were absolutely disfranchised in this manner would not, in my view, constitute a compromise preserving Kramer, Cipriano, and Phoenix intact.

Regardless of whether the Texas system in practice erects a de facto property-related barrier to voting, the rendering requirement itself creates a classification restricting the franchise on grounds not related to the voting process. Since the state has not advanced a compelling justification for that classification, I would conclude that it is constitutionally invalid.

T.M.

1, 11-12

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: APR 4 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1723

John L. Hill, Attorney General of Texas, Appellant, *v.* Michael L. Stone et al. | On Appeal from the United States District Court for the Northern District of Texas.

[February —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us once again to consider the constitutionality of a classification restricting the right to vote in a local election.

Appellees, residents of Ft. Worth, Texas, brought this action to challenge the state and city laws limiting the franchise in city bond elections to persons who have made available for taxation some real, mixed, or personal property. A three-judge District Court held that this restriction on suffrage did not serve any compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment. *Stone* v. *Stovall*, 377 F. Supp. 1016 (ND Tex. 1974). We granted a partial stay of the District Court's order pending disposition of the appeal. 416 U. S. 963. We subsequently noted probable jurisdiction. 419 U. S. 822.

I

The Texas Constitution provides that in all municipal elections "to determine expenditure of money or assumption of debt," only those who pay taxes on property in the city are eligible to vote. Tex. Const. Art. 6, § 3. In

W. Douglas
Oct 7

8,12

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: _____

Recirculated: APR 16 197

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1723

John L. Hill, Attorney General of Texas, Appellant, v. Michael L. Stone et al. | On Appeal from the United States District Court for the Northern District of Texas.

[February —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us once again to consider the constitutionality of a classification restricting the right to vote in a local election.

Appellees, residents of Ft. Worth, Texas, brought this action to challenge the state and city laws limiting the franchise in city bond elections to persons who have made available for taxation some real, mixed, or personal property. A three-judge District Court held that this restriction on suffrage did not serve any compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment. *Stone* v. *Stovall*, 377 F. Supp. 1015 (ND Tex. 1974). We granted a partial stay of the District Court's order pending disposition of the appeal. 418 U. S. 903. We subsequently noted probable jurisdiction. 419 U. S. 822.

I

The Texas Constitution provides that in all municipal elections "to determine expenditure of money or assumption of debt, only those who pay taxes on property in the city are eligible to vote." Tex. Const. Art. 6, § 3. In

Wm. Coyle 0674

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1975

Re: No. 73-1723 - Hill v. Stone

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1975

No. 73-1723 Hill v. Stone

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 30, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1723 - Hill v. Stone

Going back over my Conference notes in this case, Thurgood's memorandum for affirmance, and the Chief's note indicating his preference to treat it as a "non-case", I have a feeling that there may be a place for someone who operates in the manner of a French politician forming a cabinet.

The three of us who have adhered to our Conference votes to substantially reverse obviously do not command a majority. On the other hand, I would think Thurgood's memorandum might pose problems not only for the three of us, but for others by virtue of its treatment of Rosario v. Rockefeller, 410 U.S. 752 (1973), and Salyer Land Co. v. Tulare Lake Basin Water District, 410 U.S. 719 (1973).

I think that if there were a substantial factual basis in the record for the assumptions which Thurgood makes on page 11 of his memorandum, one could conclude that the practical effect of the Texas system violated the principles laid down in Phoenix v. Kolodziejski, 399 U.S. 204 (1970). But it is clear, as his memorandum points out, that the record doesn't afford any basis for this sort of determination.

Wm. Rehnquist
2-74

Unlike Thurgood, I would not be willing to decide the case here on the basis of what he refers to as "concessions" made by counsel at argument; I don't think those concessions are as clear as he indicates, and I don't think we ought to decide the issues solely on a basis such as that. I do think, though, that the concessions are sufficient to raise a serious question as to whether the Texas system operates in practice the way it is supposed to operate in theory.

The way the Texas system operates in theory would not, I should think, run afoul of Phoenix, supra. Judge Thornberry's opinion for the three-judge District Court concedes that one can vote without rendering all his property, and that the Texas Supreme Court has held that a person may vote if he renders property of any value, whether or not a tax has been paid. J.S. 15(a)-16(a).

I would think that if the system actually works this way, appellees cannot make the showing of "serious burden or infringement" on the right to vote described by Lewis in his dissenting opinion in Rosario, 410 U.S., at 767.

Judge Thornberry's opinion says that "we suspect the Texas rendering requirement has created a class of citizens who own too little property to merit a vote in bond elections. The record fails to indicate the number of people who render for taxation personalty other than automobiles but we doubt that many do." J.S. 9(a). There is simply nothing in the record one way or the other on this question, as Thurgood's memorandum points out at page 12.

Judge Brewster, concurring in the result, says:

> "The memorandum opinion says that most automobiles and personal property are not rendered for taxation. I regard this as totally irrelevant. If it were pertinent, a look at the sworn statement of those who

render their property for taxation might show that a good deal of personal property is rendered."

I would think a brief per curiam could be written in this case, keeping existing case law precisely intact, not only Phoenix, supra, but Rosario, supra, and Salyer as well. It would vacate and remand the case to the District Court for further proceedings.

We would in effect decline to affirm because there is nothing in the record before the District Court which would support the assumptions as to the practical operation of the system made by Judge Thornberry in his opinion for the Court, or the contrary assumption made by Judge Brewster in his concurrence. We would likewise decline to reverse because, whether or not the system may in theory pass constitutional muster, if its practical effect is to impermissibly disenfranchise identifiable groups of voters, such as non-real property owners, it would be invalid under Phoenix. I agree that the statements of counsel at oral argument raise enough doubt that the system works in practice as it does in theory so that further proceedings from the District Court would be warranted to deal with evidence as to the effect of these provisions, rather than with what the District Court "suspects" about their operation. In the process of vacating and remanding, we might likewise be able to mildly chide the District Court in the manner suggested in the Chief's note respecting this case.

Sincerely,

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1723

John L. Hill, Attorney General of Texas, Appellant, *v.* Michael L. Stone et al. | On Appeal from the United States District Court for the Northern District of Texas.

[May —, 1975]

MR. JUSTICE REHNQUIST, dissenting.

The Texas Constitution restricts the vote in general obligation bond elections to those who render taxable property with local taxing officials. Tex. Const. Art. 6, § 3a. All real, personal, or mixed property owned by any citizen of the State is taxable property under state law. Tex. Const. Art. 8, § 1; Tex. Civ. Stat. Arts. 7145, 7147. And all citizens of the State are required by law to render all such taxable property with local taxing officials on a yearly basis in order that it be added to local tax rolls. Tex. Civ. Stat. Arts. 7145, 7151, 7152, 7153, 7189.

The rendition requirement for voting is satisfied by the listing of any single item of property, even though of purely nominal worth, with taxing officials and the completion of an affidavit provided at polling places with a description of any single item of property which the voter has properly rendered. Tex. Elec. Code § 5.03 *et seq.*; *Montgomery Independent School District* v. *Martin*, 464 S. W. 2d 638, 640 (Tex. 1971); *Dubose* v. *Ainsworth*, 139 S. W. 2d 307, 308 (Tex. Civ. App. 1940). Rendition immediately before the election of any item of property qualifies, even though untimely under the rendition statutes, *Markowsky* v. *Newman*, 136 S. W. 2d 808, 813 (Tex.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1723

John L. Hill, Attorney General of Texas, Appellant, *v.* Michael L. Stone et al.	On Appeal from the United States District Court for the Northern District of Texas.

[May —, 1975]

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

The Texas Constitution restricts the vote in general obligation bond elections to those who render taxable property with local taxing officials. Tex. Const. Art. 6, § 3a. All real, personal, or mixed property owned by any citizen of the State is taxable property under state law. Tex. Const. Art. 8, § 1; Tex. Civ. Stat. Arts. 7145, 7147. And all citizens of the State are required by law to render all such taxable property with local taxing officials on a yearly basis in order that it be added to local tax rolls. Tex. Civ. Stat. Arts. 7145, 7151, 7152, 7153, 7189.

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