

The Burger Court Opinion Writing Database

Beer v. United States

425 U.S. 130 (1976)

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

March 4, 1976

Re: 73-1869 - Beer v. United States

Dear Potter:

I join your opinion in the above. But see page 11,
3rd line from the bottom: would it not be desirable to
substitute for "will be," "May well be?"

Regards,

W. B.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 7, 1976

RE: No. 73-1869 - Beer v. United States

Dear Thurgood:

As I remember it you are going to write the dissent
in the above.

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 18, 1976

NO. 73-1869 Beer v. United States

Dear Thurgood:

Please join me in your dissenting opinion in
the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 ✓ Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Stevens

Re: Mr. Justice Stewart

Correlated: 100

Re: 100

1st DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 73-1869

Peter H. Beer et al. Appellants, v. United States et al.	On Appeal from the United States District Court for the District of Columbia.
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[January --, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

Section 5 of the Voting Rights Act¹ prohibits a State

¹ Section 5 provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the first sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the third sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, pre-

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

From: Mr. Justice Stewart

Circulated: _____

Recd. [unclear] Jan 7, 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 73-1869

Peter H. Beer et al.,
 Appellants } On Appeal from the United States
 v. } District Court for the District of
 United States et al. } Columbia.

[January —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

Section 5 of the Voting Rights Act¹ prohibits a State

¹ Section 5 provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the first sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the second sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the third sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1970, such State or subdivision may institute an action in the United States District Court for the District of Columbia to obtain an injunction that such qualification, pre-

To: The following persons:
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Brennan
Mr. Justice Souter
Mr. Justice O'Connor

From: Mr. Justice Stewart

Circulation: ~~1573~~ 1573

Revised

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. On Appeal from the United States
District Court for the District of
Columbia.

[January —, 1976]

Mr. JUSTICE STEWART delivered the opinion of the
Court.

Section 5 of the Voting Rights Act¹ prohibits a State

¹ Section 5 provides:

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 12, 1976

Re: No. 73-1869 - Beer v. United States

Dear Potter:

I shall await the dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnq
Mr. Justice Steve

From: Mr. Justice Whi

Circulated: 3-25-

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. } On Appeal from the United States
District Court for the District of
Columbia.

[March —, 1976]

MR. JUSTICE WHITE, dissenting.

With MR. JUSTICE MARSHALL, I cannot agree that § 5 of the Voting Rights Act of 1965 reaches only those changes in election procedures that are more burdensome to the complaining minority than pre-existing procedures. As I understand § 5, the validity of *any* procedural change otherwise within the reach of the section must be determined under the statutory standard—whether the proposed legislation has the purpose or effect of abridging or denying the right to vote based on race or color.

This statutory standard is to be applied here in light of the District Court's findings, which are supported by the evidence and are not now questioned by the Court. The findings were that the nominating process in New Orleans' councilmanic elections is subject to majority vote and anti-single shot rules and that there is a history of block racial voting in New Orleans, the predictable result being that no Negro candidate will win in any district in which his race is in the minority. In my view, where these facts exist, combined with a segregated residential pattern, § 5 is not satisfied unless, to the extent practicable, the new electoral districts afford the Negro minority the opportunity to achieve legislative representation roughly proportional to the Negro population in the community. Here, with a seven-member City

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

From: Mr. Justice White

Circulated: _____

Recirculated: 3-26-7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. } On Appeal from the United States
District Court for the District of
Columbia.

[March —, 1976]

MR. JUSTICE WHITE, dissenting.

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This statutory standard is to be applied here in light of the District Court's findings, which are supported by the evidence and are not now questioned by the Court. The findings were that the nominating process in New Orleans' councilmanic elections is subject to majority vote and anti-single shot rules and that there is a history of block racial voting in New Orleans, the predictable result being that no Negro candidate will win in any district in which his race is in the minority. In my view, where these facts exist, combined with a segregated residential pattern, § 5 is not satisfied unless, to the extent practicable, the new electoral districts afford the Negro minority the opportunity to achieve legislative representation roughly proportional to the Negro population in the community. Here, with a seven-member City

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1869 -- Peter H. Beer v. United States

In due course, I will circulate a dissent in this case.

T.M.

T. M.

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

From: Mr. Justice Marshall
MAR 11 1976
Circulated: _____

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. } On Appeal from the United States
District Court for the District of
Columbia.

[March —, 1976]

MR. JUSTICE MARSHALL, dissenting.

Over the past 10 years the Court has, again and again, read the jurisdiction of § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 89 Stat. 400-402, 42 U. S. C. § 1973c, expansively so as "to give the Act the broadest possible scope" and to reach "any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Board of Elections*, 393 U. S. 544, 567 (1969). See also *Georgia v. United States*, 411 U. S. 526 (1973); *Perkins v. Matthews*, 400 U. S. 379 (1971); *South Carolina v. Katzenbach*, 383 U. S. 301 (1966). While we have settled the contours of § 5's jurisdiction, however, we have yet to devote much attention to defining § 5's substantive force within those bounds. Thus, we are faced today for the first time with the question of § 5's substantive application to a redistricting plan. Essentially, we must answer one question: when does a redistricting plan have the effect of "abridging" the right to vote on account of race or color?

The Court never answers this question. Instead, it produces a convoluted construction of the statute that transforms the single question suggested by § 5 into three questions, and then provides precious little guidance in answering any of them.

Under the Court's reading of § 5, we cannot reach

PP. 2,35-13

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

From: Mr. Justice Marshall

Circulated: _____

Recirculated: MAR 18 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. } On Appeal from the United States
District Court for the District of
Columbia.

[March —, 1976]

MR. JUSTICE MARSHALL, dissenting.

Over the past 10 years the Court has, again and again, read the jurisdiction of § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 89 Stat. 400-402, 42 U. S. C. § 1973c, expansively so as "to give the Act the broadest possible scope" and to reach "any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Board of Elections*, 393 U. S. 544, 567 (1969). See also *Georgia v. United States*, 411 U. S. 526 (1973); *Perkins v. Matthews*, 400 U. S. 379 (1971); *South Carolina v. Katzenbach*, 383 U. S. 301 (1966). While we have settled the contours of § 5's jurisdiction, however, we have yet to devote much attention to defining § 5's substantive force within those bounds. Thus, we are faced today for the first time with the question of § 5's substantive application to a redistricting plan. Essentially, we must answer one question: when does a redistricting plan have the effect of "abridging" the right to vote on account of race or color?

The Court never answers this question. Instead, it produces a convoluted construction of the statute that transforms the single question suggested by § 5 into three questions, and then provides precious little guidance in answering any of them.

Under the Court's reading of § 5, we cannot reach

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

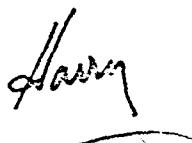
January 19, 1976

Re: No. 73-1869 - Beer v. United States

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

January 8, 1976

No. 73-1869 Beer v. United States

Dear Potter:

Please join me in your opinion for the Court.

I may file a brief concurrence to reaffirm my agreement with Mr. Justice Black and Mr. Justice Harlan as to the constitutionality of § 5.

Sincerely,

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.

January 15, 1976

No. 73-1869 Beer v. United States

Dear Potter:

Please join me in your opinion for the Court.

As I mentioned to you, I may add a one sentence concurrence to record my continuing agreement with Hugo Black as to the unconstitutionality of certain aspects of § 5.

Sincerely,

L. F. Powell, Jr.

Mr. Justice Stewart

1fp/ss

cc: The Conference

1st DRAFT

2-2-76

SUPREME COURT OF THE UNITED STATES

No. 73-1869

Peter H. Beer et al.,
Appellants,
v.
United States et al. } On Appeal from the United States
District Court for the District of
Columbia.

[February —, 1976]

MR. JUSTICE POWELL, concurring.

Assuming the constitutionality of § 5 of the Voting Rights Act,* I join the opinion of the Court.

*As indicated in my dissent in *Georgia v. United States*, 411 U. S. 526, 545 (1973), I continue to have the same reservations as to the constitutionality of this section as expressed by Mr. Justice Black in *South Carolina v. Katzenbach*, 383 U. S. 301, 357-362 (1966) (concurring and dissenting). See also comments of Mr. Justice Harlan in *Allen v. State Board of Elections*, 393 U. S. 544, 582, 585-587 (1969) (concurring and dissenting). My doubt as to the validity of § 5 relates not to the power of Congress (indeed, the duty) to enact appropriate legislation to safeguard the voting rights of all citizens. Rather, it relates to the selective application of § 5 to only a few States, and to the odious requirement of advance review of state and local legislative acts by federal executive authorities.

355,

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 15, 1976

Re: No. 73-1869 - Beer v. United States

Dear Potter:

Please join me.

Sincerely,

✓
W

Mr. Justice Stewart

Copies to the Conference