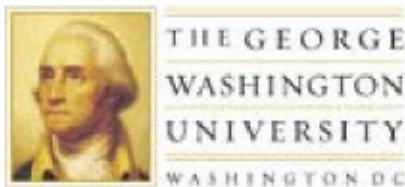


# The Burger Court Opinion Writing Database

## *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,

WRB

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

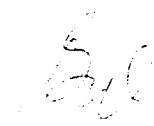
January 7, 1976

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 Stewart

1. Mr. Justice Stewart

Concluded: Jan 1, 1976

Revised: Jan 1, 1976

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.
--	---

[January —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

Section 5 of the Voting Rights Act<sup>1</sup> prohibits a State

<sup>1</sup> 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  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

From: Mr. Justice

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

Revised: Jan 7 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.

[January —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

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To: The Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

From: Mr. Justice

Circulation: 1976

1976

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 Act<sup>1</sup> prohibits a State

<sup>1</sup>Section 5 provides:

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

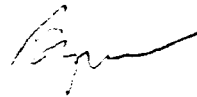
January 12, 1976

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 Stevens

From: Mr. Justice White

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

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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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

Circulated: **MAR 11 1976**

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 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.
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[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

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

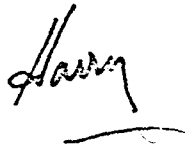
January 19, 1976

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

Dear Potter:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

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*

Mr. Justice Stewart

lfp/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.

✓  
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,

*WHR*

Mr. Justice Stewart

Copies to the Conference