

The Burger Court Opinion Writing Database

Examining Board of Engineers, Architects and Surveyors v. Flores de Otero

426 U.S. 572 (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

June 10, 1976

Re: 74-1267 - Examining Board of Engineers v. de Otero

Dear Harry:

I join your proposed opinion.

Regards,

WB3

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1976

RE: No. 74-1267 Examining Board v. de Otero

Dear Harry:

I agree.

Sincerely,

W. J. Brennan, Jr.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1976

Re: No. 74-1267, Examining Bd. v. Flores de Otero

Dear Harry,

I agree in general with your very thorough opinion for the Court in this case. I am not sure, however, that I understand the meaning of the phrase "nonfederal polity" as used twice on page 31. It would help me if the word "State" were substituted for that phrase in line 5 on page 31. It would also help me if the last sentence of the full paragraph on page 31 could be changed along the following lines: "A classification based on citizenship, not stemming from congressional power over immigration and naturalization, is subject to strict judicial scrutiny."

Perhaps these suggested revisions would substantially change the meaning you intended. If so, I would be glad, of course, to discuss my problems further with you.

Sincerely yours,

P. S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1976

No. 74-1267, Examining Board v. de Otero

Dear Harry,

I meant to say in my earlier letter to you today that I did not see any unresolvable tensions between your opinion in this case and John's opinions in Mow Sun Wong and Diaz, but that I confidently assume that you and he can resolve any semantic inconsistencies that may appear.

Sincerely yours,

P.S.
17

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1976

Re: No. 74-1267, Examining Bd.
v. Flores de Otero

Dear Harry,

This will confirm that I join
your opinion for the Court in this case.

Sincerely yours,

P. S.
/

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 4, 1976

Re: No. 74-1267 - Examining Board of Engineers
v. Flores de Otero

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1976

Re: No. 74-1267 -- Examining Board of Engineers,
Architects and Surveyors v. Maria C. Flores de Otero
and Sergio Perez Nogueiro

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 5/3/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1267

Examining Board of Engineers,
Architects and Surveyors,
etc., et al., Appellants, } On Appeal from the
v. } United States District
Maria C. Flores de Otero and } Court for the District
Sergio Perez Nogueiro. } of Puerto Rico.

[May —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the United States District Court for the District of Puerto Rico possesses jurisdiction, under 28 U. S. C. § 1343 (3),¹ to entertain a suit based upon 42 U. S. C. § 1983,² and, if the answer

¹ Title 28 U. S. C. § 1343 provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States"

² Title 42 U. S. C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 4, 1976

Re: No. 74-1267 - Examining Board of Engineers

v. de Otero

Dear Potter:

This is in response to your letter of today. Bill Brennan has also called.

I shall be glad to replace the words "nonfederal polity" with the word "State" on line 5 of page 31. I am inclined now to omit the last sentence of the full paragraph on page 31. I hope that this will eliminate any problem that exists with respect to it.

I am having the Print Shop rerun the opinion with these changes and with corrections of a number of typographical errors that appeared in the first draft.

Sincerely,



Mr. Justice Stewart

cc: The Conference

P.S. I spoke with John this morning about possible impact between de Otero and Mow Sun Wong and Diaz. John tells me that he felt there was nothing inconsistent. This is the assurance I wanted, and I am inclined to agree.

APR 31 1976
STYLISTIC CHANGES

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 5/5/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1267

Examining Board of Engineers,
Architects and Surveyors,
etc., et al., Appellants,
v.
Maria C. Flores de Otero and
Sergio Perez Nogueiro. } On Appeal from the
United States District
Court for the District
of Puerto Rico.

[May —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the United States District Court for the District of Puerto Rico possesses jurisdiction, under 28 U. S. C. § 1343 (3),¹ to entertain a suit based upon 42 U. S. C. § 1983,² and, if the answer

¹ Title 28 U. S. C. § 1343 provides:

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² Title 42 U. S. C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

V
pp. 28, 29, 32, 33

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice F. Murphy
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 6/10/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1267

Examining Board of Engineers,
Architects and Surveyors,
etc., et al., Appellants,
v.
Maria C. Flores de Otero and
Sergio Perez Nogueiro. } On Appeal from the
United States District
Court for the District
of Puerto Rico.

[May —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether the United States District Court for the District of Puerto Rico possesses jurisdiction, under 28 U. S. C. § 1343 (3),¹ to entertain a suit based upon 42 U. S. C. § 1983,² and, if the answer

¹ Title 28 U. S. C. § 1343 provides:

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² Title 42 U. S. C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1267 - Examining Board v. de Otero

There is one hold for de Otero:

No. 74-1522, Colon v. Ortiz. The appellees are plaintiffs. They challenged the constitutionality of a Puerto Rico statute that provides that the residents of San Juan elect twelve members of the municipal assembly and that the Governor appoint five. Originally the District Court dismissed the complaint. The plaintiffs appealed and the CA 1 reversed, and ordered the convening of a three-judge court. 475 F.2d 135. The three-judge court ruled that it had jurisdiction under 28 U.S.C. § 1343(3), that it need not abstain, that the statute was unconstitutional, and that a permanent injunction was necessary.

Insofar as the court held that it had jurisdiction under § 1343(3) and that it need not abstain, its decision accords with that in de Otero.

The disposition of the merits, however, does not involve any application of de Otero. The apparent rationale for the statute is that San Juan is the capitol and cultural center of Puerto Rico, that all citizens of the island have an interest in what goes on there, and that appointment of five members of the municipal assembly by the Governor effectuates the entire island's general interest. The rationale of the District Court in striking the statute, however, was that San Juan residents who vote for the winning candidate in the gubernatorial election gain indirect representation within the municipal assembly through the five assemblymen appointed by the Governor; thus, those voters have more voting power in their own municipal assembly than do San Juan residents who support a losing

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 28, 1976

Re: No. 74-1522 - Colon v. Ortiz

Dear Byron:

This is the hold for No. 74-1267, Examining Board of Engineers, etc. v. de Otero. On checking the record, I find that we granted an application for stay of judgment on April 14, 1975. 421 U.S. 903.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1976

No. 74-1267 Examining Board of Engineers
v. de Otero

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

No. 74-1267

To The Chief Justice
Mr Justice Brennan
Mr Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Clark
Mr. Justice Brandeis

Examining Board of Engineers,

Architects and Surveyors, et al.

Appellants,

v.

JUN 3 1975

Maria C. Flores de Otero and

Sergio Perez Noqueiro.

On Appeal from the United States District Court for the District of Puerto Rico.

MR. JUSTICE REHNQUIST, dissenting.

I agree with the Court's conclusion that the United States District Court for the District of Puerto Rico had jurisdiction of appellees' claim under 28 U.S.C. § 1343(3), and that it was not obligated to abstain from reaching the merits of that claim. I believe that I have some understanding of the difficulties which the Court necessarily encounters in then determining whether either the Fifth Amendment or the Fourteenth Amendment to the United States Constitution apply to Puerto Rico. But without attempting to recapitulate the doctrine of the cases from Downes v. Bidwell, 182 U.S. 244 (1901), to Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), I do not think the inquiry lends itself to the facile "either-or" answer upon which the Court ultimately settles.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1267

Examining Board of Engineers,
Architects and Surveyors,
etc., et al., Appellants,
v.
Maria C. Flores de Otero and
Sergio Perez Nogueiro. } On Appeal from the
United States District
Court for the District
of Puerto Rico.

[June —, 1976]

MR. JUSTICE REHNQUIST, dissenting.

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The Fourteenth Amendment is by its terms applicable to States: Puerto Rico is not a State. Doubtless constitutional inquiries shrouded as this one is in both history and case law cannot be definitively answered so simply as this, but I would be inclined to reject the claim that the Fourteenth Amendment is applicable to Puerto Rico until a case sufficiently strong to overcome