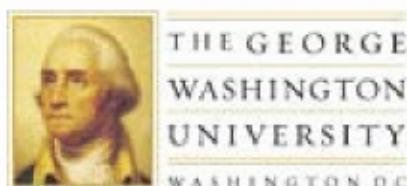


The Burger Court Opinion Writing Database

Lockport v. Citizens for Community Action at Local Level, Inc.

430 U.S. 259 (1977)

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. 20543CHAMBERS OF
THE CHIEF JUSTICE

March 3, 1977

Re: 75-1157 - Town of Lockport, New York, et al.
v. Citizens for Community Action
at the Local Level, Inc., et al.

Dear Potter:

As for now, show me as concurring in the judgment. I am, of course, in complete agreement with the result, but I am troubled by several points.

(1) I am concerned with the conclusion that the dual-majority system would be unconstitutional if it "were clear that all voters in Niagara County have substantially identical interests" Draft, at 9. Even if we assumed that Niagara County was politically and sociologically homogeneous, I would still uphold New York's system. In my judgment, the dual-majority requirement recognizes, in effect, that citizens of small governmental units are forming or changing the structure of a broader, more regional governmental authority. I would not delve at all into the distinctiveness vel non of the interests of persons who live in different sub-governmental units but at the same time in the same larger unit; instead, so long as the sub-units are bona fide (and no one suggests that they aren't), then the State should be permitted to have a concurrent-approval requirement.

(2) I am uneasy about what appears to me as an equation of voter-exclusion cases with weighted-voting cases. Cipriano and Kramer involved absolute exclusions from the franchise, whereas the system in Salyer involved the additional factor of weighted voting. As for now, I am unable to say that the same type of scrutiny is appropriate in weighted-voting cases as was employed by the Court in Cipriano and Kramer. Although I admit that the section is susceptible to more than my reading of it, I fear that the discussion at pp. 7-9 may signal our adoption of a unitary approach in both voter-exclusion and weighted-voting cases.

- 2 -

(3) I respectfully disagree with the statement at p. 7 that "[t]he policy impact of a referendum is also much more limited than the impact of choosing representatives" I don't have to think too hard to come up with a problem in this respect -- namely, a referendum on the proposition to eliminate the legislature entirely at the local level. I think we may, if that sentence is left in, be subjecting the opinion to unnecessary criticism that we can easily avoid.

Regards,

WRB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 3, 1977

RE: No. 75-1157 Lockport, N. Y. v. Citizens, etc.

Dear Potter:

I was the other way but I am persuaded and please
join me.

Sincerely,

Bil

Mr. Justice Stewart

cc: The Conference

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

PS
 I surrender
 Please sign me

From: Mr. Justice Stewart

Circulated: FEB 17 1977

Recirculated.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1157

Town of Lockport, New York,
 et al., Appellants,
 v.
 Citizens for Community Action
 at the Local Level, Inc., et al. } On Appeal from the United
 States District Court for
 the Western District of
 New York.

[February —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.
 New York law provides that a new county charter will go into effect only if it is approved in a referendum election by separate majorities of the voters who live in the cities within the county, and of those who live outside the cities. A three-judge Federal District Court held that these requirements violate the Equal Protection Clause of the Fourteenth Amendment. We noted probable jurisdiction of this direct appeal from the District Court's judgment under 28 U. S. C. § 1253. 426 U. S. 918.

I

County government in New York has traditionally taken the form of a single-branch legislature, exercising general governmental powers. General governmental powers are also exercised by the county's constituent cities, villages, and towns. The allocation of powers among these subdivisions can be changed, and a new form of county government adopted, pursuant to referendum procedures specified in Art. IX of the New York Constitution¹ and implemented by § 33

¹ Article IX § 1(h)(1) of the New York Constitution provides in pertinent part:

“§ 1. BILL OF RIGHTS FOR LOCAL GOVERNMENTS

“Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local govern-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1977

Re: No. 75-1157 - Lockport v. Citizens for
Community Action

Dear Potter:

I shall acquiesce, unless someone else
writes.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1977

Re: No. 75-1157, Lockport v. Citizens for Community
Action

Dear Potter:

I surrender. Please join me.

Sincerely,

T.M.
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1977

Re: No. 75-1157 - Lockport, New York v. Citizens for
Community Action

Dear Potter:

Please join me.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 18, 1977

No. 75-1157 Lockport v. Citizens

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 24, 1977

Re: 75-1157 - Lockport, New York v. Citizens for
Community Action

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1977

Re: 75-1157 - Lockport v. Citizens for Community
Action, etc.

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference