The Burger Court Opinion Writing Database

Wooley v. Maynard

430 U.S. 705 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

From: The Chief Justice

Circulated: MAR 10 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[March —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The issue on appeal is whether the State of New Hampshire may constitutionally prohibit covering of the motto "Live Free or Die" on passenger vehicle license plates by individual licensees who find that motto repugnant to their moral and religious beliefs.

(1)

Since 1969 New Hampshire has required that noncommercial vehicles bear license plates embossed with the state motto, "Live Free or Die."[1] N. H. Rev. Stat. Ann. § 263:1. Another New Hampshire statute makes it a misdemeanor "knowingly [to obscure] . . . the figures or letters on any number plate." N. H. Rev. Stat. Ann. § 262:27-c (Supp. 1973). The term "letters" in this section has been interpreted by the State's highest court to include the state motto. *State* v. *Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972).

Appellees George Maynard and his wife Maxine are fol-

[1] License plates are issued without the state motto for trailers, agricultural vehicles, car dealers, antique automobiles, the Governor of New Hampshire, its Congressional Representatives, its Attorney General, Justices of the State Supreme Court, veterans, chaplains of the State Legislature, sheriffs and others.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Byron:

I have your note of March 14 and the proposed partial dissent.

I had thought that three arrests and one 15 day jail term showed that there was really more than a "threatened" prosecution. Here the state has shown an adamant attitude to punish "dissidents" and make an example of this fellow. I had not thought more than a recital of the bare facts was needed to show this. In this respect, the case is distinguishable from those where the prospect of further prosecution was speculative. Alternatively, I would be willing to consider affirming only as to the declaratory judgment since that will give him his relief, Doran v. Salem Inn, 422 U.S., at 931, provided this will satisfy you and not "frighten" off other votes.

Regards,

WEB

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 16, 1977

Re: 75-1453 Wooley v. Maynard

MEMORANDUM TO THE CONFERENCE:

We are experiencing the usual diversity of views in First Amendment cases.

I have been awaiting the "lineup," and it now appears that the maximum "solidarity" can be achieved by deleting Part 4. Those to whom that part appeals may want to say something separately.

I, therefore, call for a "show of hands" on deleting Part 4 and adding the following as Note 9 page 8, line 5.

> In Steffel v. Thompson, 415 U.S. 452, 463 & n. 12 (1974) we reserved the question of when a permanent injunction may be granted in addition to declaratory relief. We conclude that such injunction was proper against the background of three prosecutions. The prosecutions enjoined here are for future, not past conduct. The rights implicated are protected by the First Amendment, and future prosecutions, even if unsuccessful, will have the effect of seriously interfering with appellees' freedom to drive their automobile. Three separate prosecutions of Mr. Maynard within the span of five weeks evidences sufficiently the State's determination to engage in vigorous enforcement of the statute--amounting virtually to harassment, cf. Dombrowski v. Pfister, 380 U.S. 479 (1965). On this record the threat of additional future prosecutions is not speculative.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

March 22, 1977

Re: 75-1453 Wooley v. Maynard

MEMORANDUM TO THE CONFERENCE:

Enclosed is what I hope is the final draft of the opinion in this "sticky" little case. It is not feasible to meet every nuance of each of nine conceptions of the First Amendment but I have now tried to accommodate all the "accommodatable" views.

Regards,

WEB

PP 4-7, 9, 11
dd § (4) D

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

From: The Chief Justice

Circulated: _____

Recirculated: MAR 2 9 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[March —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The issue on appeal is whether the State of New Hampshire may constitutionally prohibit covering of the motto "Live Free or Die" on passenger vehicle license plates by individual licensees who find that motto repugnant to their moral and religious beliefs.

(1)

Since 1969 New Hampshire has required that noncommercial vehicles bear license plates embossed with the state motto, "Live Free or Die."[1] N. H. Rev. Stat. Ann. § 263:1. Another New Hampshire statute makes it a misdemeanor "knowingly [to obscure] . . . the figures or letters on any number plate." N. H. Rev. Stat. Ann. § 262:27–c (Supp. 1973). The term "letters" in this section has been interpreted by the State's highest court to include the state motto. *State* v. *Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972).

Appellees George Maynard and his wife Maxine are fol-

[1] License plates are issued without the state motto for trailers, agricultural vehicles, car dealers, antique automobiles, the Governor of New Hampshire, its Congressional Representatives, its Attorney General, Justices of the State Supreme Court, veterans, chaplains of the State Legislature, sheriffs and others.

Chief
With your permission, I will withdraw my
concurring in the result to Please
join me

pp 1, 2, 6-11

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

From: The Chief Justice

Circulated: _____

Recirculated: APR 18 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[March —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The issue on appeal is whether the State of New Hampshire may constitutionally enforce criminal sanctions against persons who cover the motto "Live Free or Die" on passenger vehicle license plates because that motto is repugnant to their moral and religious beliefs.

(1)

Since 1969 New Hampshire has required that noncommercial vehicles bear license plates embossed with the state motto, "Live Free or Die."[1] N. H. Rev. Stat. Ann. § 263:1. Another New Hampshire statute makes it a misdemeanor "knowingly [to obscure] . . . the figures or letters on any number plate." N. H. Rev. Stat. Ann. § 262:27-c (Supp. 1973). The term "letters" in this section has been interpreted by the State's highest court to include the state motto. *State* v. *Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972).

Appellees George Maynard and his wife Maxine are fol-

[1] License plates are issued without the state motto for trailers, agricultural vehicles, car dealers, antique automobiles, the Governor of New Hampshire, its Congressional Representatives, its Attorney General, Justices of the State Supreme Court, veterans, chaplains of the State Legislature, sheriffs and others.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 14, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Potter:

I have your note of earlier today.

It seems to me there are no differences but only semantical variations. I am quite willing to modify the first 8 lines of part B, page 10, to read:

"B

"Identifying the Maynards' interests as implicating First Amendment protections does not end our inquiry however. We must also determine whether the State's interest is sufficiently compelling to justify requiring that appellees display the State motto on their license plates. See, e.g., O'Brien, supra, 391 U.S., at 376-377."

I assume this will meet your problem and I hardly think the change will disturb any of the "joins."

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 18, 1977

MEMORANDUM TO THE CONFERENCE:

Re: 75-1453 Wooley v. Maynard

I can have Wooley ready for Wednesday, since Bill Rehnquist has adjusted his dissent to my language changes.

We have so few cases this week I suggest that any one "dissent" will lead me to lay it over.

Regards,

WEB

—J

p. 10

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

From: The Chief Justice

Circulated: _____

Recirculated: APR 19 1977

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[March —, 1977]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The issue on appeal is whether the State of New Hampshire may constitutionally enforce criminal sanctions against persons who cover the motto "Live Free or Die" on passenger vehicle license plates because that motto is repugnant to their moral and religious beliefs.

(1)

Since 1969 New Hampshire has required that noncommercial vehicles bear license plates embossed with the state motto, "Live Free or Die."[1] N. H. Rev. Stat. Ann. § 263:1. Another New Hampshire statute makes it a misdemeanor "knowingly [to obscure] . . . the figures or letters on any number plate." N. H. Rev. Stat. Ann. § 262:27–c (Supp. 1973). The term "letters" in this section has been interpreted by the State's highest court to include the state motto. *State* v. *Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972).

Appellees George Maynard and his wife Maxine are fol-

[1] License plates are issued without the state motto for trailers, agricultural vehicles, car dealers, antique automobiles, the Governor of New Hampshire, its Congressional Representatives, its Attorney General, Justices of the State Supreme Court, veterans, chaplains of the State Legislature, sheriffs and others.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1977

RE: No. 75-1453 Wooley v. Maynard

Dear Chief:

I too have difficulty with Part (4) although otherwise am glad to join your opinion. Part 4's discussion of symbolic speech seems to me to be unnecessary to the resolution of the case since in any event, as you quite rightly point out in section (5), Maynard cannot be compelled by the state to disseminate a message with which he disagrees. Moreover, I don't think I could agree with the resolution of the symbolic speech issue on the facts of this case; I would think that it is probably fairly clear to most people that Maynard's covering up the "Live Free or Die" slogan is his way of communicating his disagreement with the slogan. Accordingly, I'll join Potter's statement at the foot of the opinion if you feel that you prefer not to delete Part 4.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 16, 1977

RE: No. 75-1453 Wooley v. Maynard

Dear Chief:

I "show my hand" both for deleting Part 4 and adding your suggested Note 9.

Sincerely,

Bill

The Chief Justice

cc: The Conference

J

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 25, 1977

Re: No. 75-1453 Wooley v. Maynard

Dear Chief:

I agree with your recirculation of March 23.

Would you please add, however, at the end of footnote 10 on p. 7, the notation: "Mr. Justice Brennan does not concur in this footnote."

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 10, 1977

Re: No. 75-1453, Wooley v. Maynard

Dear Chief,

I should appreciate your adding the following at the foot of your opinion for the Court:

> Mr. Justice Stewart concurs in the judgment of the Court and joins in all but part (4) of its opinion.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 16, 1977

Re: No. 75-1453 -- Wooley v. Maynard

Dear Chief,

In response to your letter of today, I vote as follows:

(1) In favor of deleting Part 4.

(2) In favor of adding the proposed Note 9, except that I would eliminate the phrase "amounting virtually to harassment." I think it is inaccurate so to characterize the enforcement of the New Hampshire law, when the validity of the law had been explicitly upheld by the New Hampshire Supreme Court.

Sincerely yours,

P.S.
1.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 14, 1977

75-1453 -- Wooley v. Maynard

Dear Chief,

I cannot agree that any state or federal interest could ever justify "infringement" of First Amendment rights. For this reason I am not able to join your proposed opinion as recirculated April 13, with the additional sentence in the first full paragraph under "B" on page 10. John Harlan and I for many years carried on a continuing off-the-record dialogue on this subject. While he thought, probably quite rightly, that my view was no more than semantic and probably circular, he nonetheless came to agree with it. In short, this view is simply that sometimes interests in free expression must be subordinated to strong societal policies, but that in such situations there is no infringement of First Amendment rights. Because of this view, I also have trouble with the first two sentences of the paragraph in question, because of their use of the word "rights."

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 15, 1977

75-1453 - Wooley v. Maynard

Dear Chief,

The changes in language suggested in your letter of April 14 serve to meet my problem. If these changes are made, I shall be glad to join your opinion for the Court.

Sincerely yours,

P.S.
1.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 19, 1977

Re: No. 75-1453, Wooley v. Maynard

Dear Chief,

Assuming that there will be a final printed circulation that all of us can see and approve today, I would have no objection whatever to the announcement of this opinion tomorrow morning.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 14, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

I am considering a partial dissent along the lines of the enclosed.

Also, I have not come to rest with respect to Part (4) of your draft.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

No. 75-1453 - Wooley v. Maynard

Mr. Justice White, concurring in part and dissenting in part.

Absent some explanation as to why an injunction as well as a declaratory judgment was necessary in this case, I cannot join Part (3) of the Court's opinion and hence dissent from the judgment insofar as it affirms the issuance of the injunction.

Steffel v. Thompson, 415 U.S. 452 (1974), held that when state proceedings are not pending, but only threatened, a declaratory judgment may be entered with respect to the state statute at issue without regard to the strictures of Younger v. Harris, 401 U.S. 37 (1971). But Steffel left open whether an injunction should also issue in such circumstances. 415 U.S., at 463. Then, Doran v. Salem Inn, Inc., 422 U.S. 922 (1975), approved issuance by a federal court of a preliminary injunction against a threatened state prosecution, but only pending decision on the declaratory judgment and only then subject to "stringent" standards which should cause the District Court to "weigh carefully the interests on both sides," since prohibiting the enforcement of the State's criminal law against the federal plaintiff, even pending final resolution of his case, "seriously impairs the State's interest in enforcing its criminal laws, and implicates the concerns for federalism which lie at the heart of Younger." 422 U.S., at 931. Although finding the issuance of a preliminary injunction not an abuse of discretion in that case, the Court also distinguished between a preliminary injunction pendente lite and a permanent injunction at the successful conclusion of the federal case; for "a District Court can generally protect the interests of a federal plaintiff by entering a declaratory judgment, and therefore the stronger injunctive medicine will be unnecessary." Id.

Doran v. Salem Inn thus did not decide the present injunction issue which the Court now disposes of in a sentence or two. Doran was true to the teachings of Douglas v. Jeannette, 319 U.S. 157 (1943), where the Court held that an injunction against threatened state criminal prosecutions should not issue even though the underlying state statute had already been invalidated, relying on the established rule "that courts of equity do not ordinarily restrain criminal prosecutions." 319 U.S., at 163. A threatened prosecution,

"even though alleged to be in violation of constitutional guarantees, is not a ground for equity relief . . . ." Id. An injunction should issue only upon a showing that the danger of irreparable injury is both "great and immediate," citing the same authorities to this effect that this Court relied on in Younger v. Harris. In each of the cited cases--and these do not exhaust the authorities to the same effect--criminal prosecutions were not pending when this Court ruled that a federal equity court should not enter the injunction. "The general rule is that equity will not interfere to prevent reenforcement of a criminal statute even though unconstitutional . . . to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights." Spielman Motor Co. v. Dodge, 295 U.S. 89, 95 (1935).

Under our cases, therefore, more is required to be shown than the Court's opinion reveals to affirm the issuance of the injunction. To that extent I therefore dissent.

March 14, 1977

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

Absent a remand to determine whether an injunction as well as a declaratory judgment is necessary in this case, I shall remain in partial dissent.

Sincerely,

The Chief Justice

Copies to Conference

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: 3-30-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[April —, 1977]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

Steffel v. *Thompson,* 415 U. S. 452 (1974), held that when state proceedings are not pending, but only threatened, a declaratory judgment may be entered with respect to the state statute at issue without regard to the strictures of *Younger* v. *Harris,* 401 U. S. 37 (1971). But *Steffel* left open whether an injunction should also issue in such circumstances. 415 U. S., at 463. Then, *Doran* v. *Salem Inn, Inc.,* 422 U. S. 922 (1975), approved issuance by a federal court of a preliminary injunction against a threatened state prosecution, but only pending decision on the declaratory judgment and only then subject to "stringent" standards which should cause the District Court to "weigh carefully the interests on both sides," since prohibiting the enforcement of the State's criminal law against the federal plaintiff, even pending final resolution of his case, "seriously impairs the State's interest in enforcing its criminal laws, and implicates the concerns for federalism which lie at the heart of *Younger.*" 422 U. S., at 931. Although finding the issuance of a preliminary injunction not an abuse of discretion in that case, the Court also distinguished between a preliminary injunction *pendente lite* and a permanent injunction at the successful conclusion of the federal case; for "a District Court can generally protect the interests of a federal plaintiff by entering a

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: _____

2nd DRAFT

Recirculated: 4-7-77

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. } On Appeal from the United States District Court for the District of New Hampshire.

[April —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting in part.

Steffel v. *Thompson*, 415 U. S. 452 (1974), held that when state proceedings are not pending, but only threatened, a declaratory judgment may be entered with respect to the state statute at issue without regard to the strictures of *Younger* v. *Harris*, 401 U. S. 37 (1971). But *Steffel* left open whether an injunction should also issue in such circumstances. 415 U. S., at 463. Then, *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922 (1975), approved issuance by a federal court of a preliminary injunction against a threatened state prosecution, but only pending decision on the declaratory judgment and only then subject to "stringent" standards which should cause the District Court to "weigh carefully the interests on both sides," since prohibiting the enforcement of the State's criminal law against the federal plaintiff, even pending final resolution of his case, "seriously impairs the State's interest in enforcing its criminal laws, and implicates the concerns for federalism which lie at the heart of *Younger*." 422 U. S., at 931. Although finding the issuance of a preliminary injunction not an abuse of discretion in that case, the Court also distinguished between a preliminary injunction *pendente lite* and a permanent injunction at the successful conclusion of the federal case; for "a District Court can generally protect the interests of a federal plaintiff by entering a

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1977

Re: No. 75-1453, Wooley v. Maynard

Dear Chief:

I, too, cannot join your Part (4).

I also have some doubts about (5)(B).

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 17, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

I vote to delete Part 4 and add Note 9.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1977

Re: No. 75-1453, Wooley v. Maynard

Dear Chief:

Please show me as concurring in the judgment.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

With your permission, I will withdraw my concurring in the result to please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Dear Thurgood
Permission is granted, in
perpetuity, to agree with
me!
CEB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 15, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

I shall wait on Bill Rehnquist's dissent mentioned in his note of March 14.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

√√

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 6, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Byron:

You have described your circulation in this case as one "concurring in part and dissenting in part." I am not concurring in the Court's opinion, so if you could change your description to "dissenting in part," I could join you and hereby do.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

√ √

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 6, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Bill:

Please join me in your dissent.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

March 11, 1977

No. 75-1453 Wooley v. Maynard

Dear Chief:

Although I do not disagree with what you say in Part (4) of your opinion, I agree with the view expressed by two or three of our Brothers that this part is unnecessary dicta.

Putting it differently, it seems to me that you would have quite an excellent opinion if Part (4) were omitted, or if you simply dropped a footnote to the effect that in view of the disposition of the case on conventional First Amendment grounds, there is no occasion to reach the argument as to symbolic speech.

I think your Part (5) is especially good.

Sincerely,

The Chief Justice

lfp/ss

2

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 15, 1977

No. 75-1453 Wooley v. Maynard

Dear Chief:

Referring to the exchange of correspondence between you and Byron, I agree with you that the prospect of further prosecution was not speculative, and would prefer to affirm both with respect to the injunction and declaratory judgment.

If, however, you need my vote for a Court to affirm only as to the declaratory judgment, I would not be inclined to dissent.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 17, 1977

No. 75-1453 Wooley v. Maynard

Dear Chief:

Omission of Part 4, with a statement (Note) that it was unnecessary to address the symbolic speech issue, is fine with me.

Your proposed Note on Steffel also is agreeable.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 24, 1977

No. 75-1453 Wooley v. Maynard

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

In due course, I anticipate circulating a dissent from Part 5 of your circulating draft.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1977

Re: No. 75-1453 Wooley v. Maynard

Dear Byron:

Please join me in your partial dissent in this case.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Chief:

Since I am on the dissenting side on the merits of the First Amendment issue in this case, my views on the Steffel issue may not be of great interest to you. I do, however, feel that your response to Byron's draft dissent on the point is less than convincing, and I will therefore remain with Byron there. In the event that you go through with your announced plan to delete Part 4, I will in my dissent on the merits point out the fact that the Court's opinion has entirely omitted to pass on the First Amendment issue which the District Court decided, and gone on to decide the case on a First Amendment issue which the District Court never considered.

Sincerely,

WHR

The Chief Justice

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Byron:

Please join me in your separate opinion circulated March 30th. I am also preparing a separate dissent on the merits, which I hope to have in circulation early next week.

Sincerely,

Mr. Justice White

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L

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 6, 1977

Re: No. 75-1453 - Wooley v. Maynard

Dear Byron:

I think Harry's letter to you of April 6th is probably a sounder analysis of our relationship, as dissenters on the merits, to your partial dissent, than was my simple "join" letter to you earlier. It would please me, too, therefore, if you could make the change which Harry suggests in his letter of April 6th.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: APR 5 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. | On Appeal from the United States District Court for the District of New Hampshire.

[April —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

The Court holds that a State is barred by the Federal Constitution from displaying the state motto on a state license plate. The path that the Court travels to reach this result demonstrates the difficulty in supporting it. The Court holds that the required display of the motto is an unconstitutional "required affirmation of belief." The District Court, however, expressly refused to consider this contention, and noted that, in an analogous case, a decision of the Supreme Court of New Hampshire had reached precisely the opposite result. See *State v. Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972). The District Court found for appellees on the ground that the obscuring of the motto was protected "symbolic speech." This Court, in relying upon a ground expressly avoided by the District Court, appears to disagree with the ground adopted by the District Court; indeed it points out that appellees' claim of symbolic expression has been "substantially undermined" by their very complaint in this action. *Ante*, at 7 n. 10.

I not only agree with the Court's implicit recognition that there is no protected "symbolic speech" in this case, but I think that that conclusion goes far to undermine the Court's ultimate holding that there is an element of protected expression here. The State has not forced appellees to "say" anything; and it has not forced them to communicate ideas with

P. 2-4

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

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: APR 15 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. } On Appeal from the United States District Court for the District of New Hampshire.

[April —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

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J1

P. 1

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

From: Mr. Justice

3rd DRAFT

APR 19 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1453

Neal R. Wooley, etc., et al., Appellants, *v.* George Maynard et ux. } On Appeal from the United States District Court for the District of New Hampshire.

[April —, 1977]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The Court holds that a State is barred by the Federal Constitution from displaying the state motto on a state license plate. The path that the Court travels to reach this result demonstrates the difficulty in supporting it. The Court holds that the required display of the motto is an unconstitutional "required affirmation of belief." The District Court, however, expressly refused to consider this contention, and noted that, in an analogous case, a decision of the Supreme Court of New Hampshire had reached precisely the opposite result. See *State v. Hoskin*, 112 N. H. 332, 295 A. 2d 454 (1972). The District Court found for appellees on the ground that the obscuring of the motto was protected "symbolic speech." This Court, in relying upon a ground expressly avoided by the District Court, appears to disagree with the ground adopted by the District Court; indeed it points out that appellees' claim of symbolic expression has been "substantially undermined" by their very complaint in this action. *Ante*, at 7 n. 10.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Chief:

Please join me.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 15, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Chief:

For the reasons you stated in response to Byron's proposed partial dissent, I agree that the prospect of further prosecution is not speculative and that it was not error for the District Court to enter an injunction. Indeed, if you decide to reverse the injunction, you will "frighten" off my vote.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 17, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Chief:

Please add my name to those who favor deleting Part 4 and adding the new footnote 9. Like Potter, I have a slight preference for omitting the word "harassment" but it is merely a preference.

Respectfully,

John

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 24, 1977

Re: 75-1453 - Wooley v. Maynard

Dear Chief:

I reconfirm my join.

Respectfully,

John

The Chief Justice

Copies to the Conference