

# The Burger Court Opinion Writing Database

## *Morris v. Gressette*

432 U.S. 491 (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. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

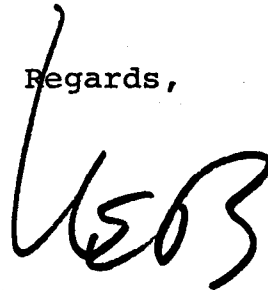
June 9, 1977

Re: 75-1583 - Morris v. Gressette

Dear Lewis:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'LFB', written over the typed word 'Regards,'.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 8, 1977

RE: No. 75-1583 Morris v. Gressette

Dear Thurgood:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,

*Biel*

Mr. Justice Marshall

cc: The Conference

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

✓  
✓

CHAMBERS OF  
JUSTICE POTTER STEWART

May 26, 1977

Re: No. 75-1583, Morris v. Gressette

Dear Lewis,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 31, 1977

Re: No. 75-1583 - Morris v. Gressette

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 26, 1977

Re: No. 75-1583, Morris v. Gressette

Dear Lewis:

I shall file a dissenting opinion "with all deliberate speed."

Sincerely,



T.M.

Mr. Justice Powell

cc: The Conference

JUN 6 1977

No. 75-1583, Morris v. Gressette

MR. JUSTICE MARSHALL, dissenting.

The Court holds today that an Attorney General's failure to object within 60 days to the implementation of a voting law that has been submitted to him under § 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973(b)(1) (Supp. V 1975) cannot be questioned in any court. Under the Court's ruling, it matters not whether the Attorney General fails to object because he misunderstands his legal duty, as in this case; because he loses the submission; or because he seeks to subvert the Voting Rights Act. Indeed, the Court today grants unreviewable discretion to a future Attorney General to bargain acquiescence in a discriminatory change in a covered State's voting laws in return for that State's electoral votes.<sup>1/</sup> Cf. J. Randall, D. Donald, *The Civil War and Reconstruction* 678-701 (2d ed. 1961) (settlement of the election of 1876).

3

6/10/77

*printed*  
1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-1583

<p>Frances Morris and Maxine Woods, Appellants, v. L. Marion Gressette et al.</p>	{	<p>On Appeal from the United States District Court for the District of South Carolina.</p>
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*with whom Mr. Justice  
Brennan joins,*

[June —, 1977]

MR. JUSTICE MARSHALL, *dissenting.*

The Court holds today that an Attorney General's failure to object within 60 days to the implementation of a voting law that has been submitted to him under § 5 of the Voting Rights Act, as amended, 42 U. S. C. § 1973 (b)(1) (Supp. V 1975), cannot be questioned in any court. Under the Court's ruling, it matters not whether the Attorney General fails to object because he misunderstands his legal duty, as in this case; because he loses the submission; or because he seeks to subvert the Voting Rights Act. Indeed, the Court today grants unreviewable discretion to a future Attorney General to bargain acquiescence in a discriminatory change in a covered State's voting laws in return for that State's electoral votes.<sup>1</sup> Cf. J. Randall, D. Donald, *The Civil War*

<sup>1</sup> "QUESTION: . . . I thought it was your position that even if he [the Attorney General] had said, we're interposing no objection because South Carolina voted Republican at the last election, that even that wouldn't be reviewable.

"[Counsel]: We think—

"QUESTION: Isn't that your position in its ultimate effect?

"[Counsel]: If that were his objection, we would be quite confident in coming to the District Court of the District of Columbia ourselves, if he had objected on that basis.

"QUESTION: No, I said, he didn't object; he says, we're interposing no objection because your state voted right at the last election. Now what



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 5, 1977

75-1583  
76-5187  
76-496

Dear Chief:

This is in response to your note about a change in the assignments. I am in the minority in No. 75-1583, Morris v. Gressette, and thus could not possibly take that one on.

On the other hand, Lewis and I are on the same side in No. 76-5187, Lee v. United States. That possibly could be exchanged for Wolman v. Essex. 76-496

I say again that I am quite content to take on Wolman with the slight reservation I mentioned this morning. It really is not a very serious one. I have discussed this with Lewis. He tells me that he is content to leave the assignment as it is or to make the suggested change. My preference, for what it is worth, is to leave it as it is, but you have the assigning power and we shall be content to abide by your judgment.

Sincerely,

The Chief Justice

cc: Mr. Justice Powell ✓

76-5187

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 Blackmun

Circulated: JUN 2 1975

Recirculated:

No. 75-1583 - Morris v. Gressette

MR. JUSTICE BLACKMUN, dissenting.

In Harper v. Levi, 171 U.S. App. D. C. 321, 520

F.2d 53 (1975), the United States Court of Appeals for the District of Columbia Circuit held that the Attorney General's decision not to make an independent assessment of South Carolina Act 1205 is reviewable under the circumstances of this case, and that § 5 of the Voting Rights Act of 1965 requires him to make an independent determination on the merits of the § 5 issues. See ante pp. 5-6.

For the reasons stated by the majority opinion in Harper v. Levi, I dissent.

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Mr. Justice Blackmun

No. 75-1583

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

Recirculated: JUN 9 1977

Francis Morris and Maxine  
 Woods, Appellants,  
 v.  
 L. Marion Gressette et al.

An Appeal from the United  
 States District Court for the  
 District of South Carolina.

[June —, 1977]

MR. JUSTICE BLACKMUN, dissenting.

In *Harper v. Levi*, 171 U. S. App. D. C. 321, 520 F. 2d 53 (1975), the United States Court of Appeals for the District of Columbia Circuit held that the Attorney General's decision not to make an independent assessment of South Carolina Act 1205 is reviewable under the circumstances of this case, and that § 5 of the Voting Rights Act of 1965 requires him to make an independent determination on the merits of the § 5 issues. See *ante*, pp. 5-6. For the reasons stated by the majority opinion in *Harper v. Levi*, I dissent.

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

From: Mr. Justice Powell

Circulated: MAY 23 1977

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1583

Frances Morris and Maxine Woods, Appellants,	} On Appeal from the United States District Court for the District of South Carolina.
v.	
L. Marion Gressette et al.	

[May —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case concerns the scope of judicial review of the Attorney General's failure to interpose a timely objection under § 5 of the Voting Rights Act to a change in the voting laws of a jurisdiction subject to that Act.

### I

The events leading up to this litigation date back to November 11, 1971, when South Carolina enacted Act 932 reapportioning the State Senate.<sup>1</sup> South Carolina promptly submitted Act 932 to the Attorney General of the United States for preclearance review pursuant to § 5 of the Voting Rights Act. 42 U. S. C. § 1973c (Supp. V).<sup>2</sup> That section

<sup>1</sup> Act 932 provided for multimember districts, required each candidate to run for a single, numbered post, and specified that primary elections be decided by a majority vote. See *Harper v. Levi*, — U. S. App. D. C. —, ———; 520 F. 2d 53, 57-58 (1975).

<sup>2</sup> Section 5 provides in pertinent part:

"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 no Novem-

new fns. 20, 22, 23  
Language change: p. 10

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

From: Mr. Justice Powell

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

Recirculated JUN 14 1977

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1583

Frances Morris and Maxine Woods, Appellants,	} On Appeal from the United States District Court for the District of South Carolina.
v.	
L. Marion Gressette et al,	

[May —, 1977]

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✓  
*Technical changes throughout*

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

From: Mr. Justice Powell

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

Recirculated: JUN 17 1977

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1583

Frances Morris and Maxine Woods, Appellants,	} On Appeal from the United States District Court for the District of South Carolina.
v.	
L. Marion Gressette et al.	

[May —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case concerns the scope of judicial review of the Attorney General's failure to interpose a timely objection under § 5 of the Voting Rights Act to a change in the voting laws of a jurisdiction subject to that Act.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 26, 1977

Re: No. 75-1583 - Morris v. Gressette

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 26, 1977

Re: 75-1583 - Morris v. Gressette

Dear Lewis:

✓ Even though my join is unconditional, I wonder if you may not want to include some discussion of Dunlop v. Bachowski, 421 U.S. 560, in addition to the citation at page 13. Perhaps you are waiting for the dissent so that you may reply more directly to what is said about the case. In all events, this is just a suggestion.

Respectfully,



Mr. Justice Powell

2 P.S. I would also not be averse to adding a few words about the unique character of this statute. In view of its impact on the sovereignty of the affected States, I think the result in this case would be correct even if ordinary principles of administrative law would lead to a contrary result in a case involving a different statute.



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 26, 1977

Re: 75-1583 - Morris v. Gressette

Dear Lewis:

Please join me.

Respectfully,

JL

Mr. Justice Powell

Copies to the Conference