

The Burger Court Opinion Writing Database

Nixon v. Administrator of General Services
433 U.S. 425 (1977)

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

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1978

Re: 75-1605 - Nixon v. Administrator of General Services, et al.

MEMORANDUM TO THE CONFERENCE:

After discussion with Henry Putzel I consented to make several slight modifications of my separate opinion in this case:

Pg 9: Delete from the first full para. the words:

"and that the Department of Justice itself supported the Act as not posing any separation of powers problems."

Related to this is footnote 8 on Pg 9 which inadequately described the ambivalence of the government positions. It will now pinpoint the various positions more fully as follows:

"8 The federal parties filed three briefs in Buckley. The main brief, styled the "Brief for the Attorney General as Appellee and for the United States as Amicus Curiae", explicitly stated that the method of appointment of four of the members of the Commission was unconstitutional. See pp. 6-7, 110-120. The Attorney General signed this portion of the brief as a party (see pp. 2, 103 n. 65). The Executive Branch therefore made it clear that, in its view, the statute was unconstitutional to the extent it reposed appointing powers in Congress. The second brief, styled the "Brief

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for the Attorney General and the Federal Election Commission", generally defended the Act but took no position concerning the method of appointing the Commission. See p. 1 n. 1. The third brief was filed by the Commission on its own behalf only; it defended the appointment procedures, but it was not joined by the Attorney General and did not express the view of the President or any other portion of the Executive Branch."

Regards,

WBB