

# The Burger Court Opinion Writing Database

## *United States v. Sheffield Board of Commissioners*

435 U.S. 110 (1978)

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

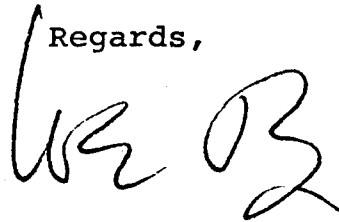
December 2, 1977

Re: 76-1662 U.S. v. Board of Commissioners of Sheffield

Dear Bill:

In due course, a dissent will be forthcoming on behalf of Bill Rehnquist, John and yours truly.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

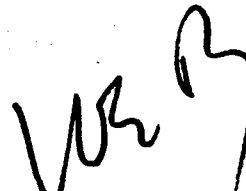
February 16, 1978

Re: 76-1662 - United States v. Board of Commissioners  
of Sheffield

Dear John:

I join your dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'WR' followed by a large, stylized flourish that extends upwards and to the right.

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated 11/30/77

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Shef-	} States District Court for
field, Alabama, et al., Appellees.	
	} the Northern District of
	} Alabama.

[December —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 5 of the Voting Rights Act of 1965 ("Act"), 79 Stat. 439, as amended, 42 U. S. C. § 1973c (1970 ed., Supp. V),<sup>1</sup>

<sup>1</sup> In pertinent parts, it provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in [§ 4 (a) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (a) (1970 ed. Supp. V)] based upon determinations made under the first sentence of [§ 4 (b) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (b) (1970 ed. Supp. V)] 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 in effect on November 1, 1964 . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f) (2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after

STYLISTIC CHANGES Throughout

Recirculation 2/14/78

SEE pp 13-14, 15-17, 18, 19, 26

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

2nd DRAFT

From: Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

Regulated: \_\_\_\_\_  
Recirculated: 2/14/78

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Sheffield, Alabama, et al., Appellees.	States District Court for the Northern District of Alabama.

[February —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.  
Section 5 of the Voting Rights Act of 1965 ("Act"). 79 Stat. 439, as amended, 42 U. S. C. § 1973c (1970 ed., Supp. V),<sup>1</sup>

<sup>1</sup> It, as set forth in 42 U. S. C. § 1973c (1970 ed., Supp. V), provides in pertinent parts:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in [§ 4 (a) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (a) (1970 ed. Supp. V)] based upon determinations made under the first sentence of [§ 4 (b) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (b) (1970 ed. Supp. V)] 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 in effect on November 1, 1964 . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, . . . and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after

see 6, 12, 15-18, 20, 23

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

From: Mr. Justice Brennan

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

Recirculated: 3/2/78

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant, v. Board of Commissioners of Sheffield, Alabama, et al., Appellees.	On Appeal from the United States District Court for the Northern District of Alabama.
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[February —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 5 of the Voting Rights Act of 1965 ("Act"), 79 Stat. 439, as amended, 42 U. S. C. § 1973c (1970 ed., Supp. V),<sup>1</sup>

<sup>1</sup> It, as set forth in 42 U. S. C. § 1973c (1970 ed., Supp. V), provides in pertinent parts:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in [§ 4 (a) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (a) (1970 ed. Supp. V)] based upon determinations made under the first sentence of [§ 4 (b) of the Act, 79 Stat. 438, as amended, 42 U. S. C. § 1973b (b) (1970 ed. Supp. V)] 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 on November 1, 1964, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, . . . and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 9, 1978

*Case would extend  
§ 5 irrationally*

*I would Reverse  
Summarily or Note  
(I affirmed  
I'll write)*

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 76-1662, United States v. Bd. of  
Comm'rs of Sheffield

The only case held for Sheffield is Dougherty County, Georgia Bd. of Ed. v. White, No. 77-120. There, a county school board, without obtaining preclearance, instituted a requirement that any employee announcing his candidacy for an elective office must take an unpaid leave of absence, pending the outcome of the election. The rule was adopted shortly after appellee, a black employee, announced his candidacy. Appellee instituted suit, contending that this new rule was unenforceable because of the failure to comply with § 5. The 3 judge district court agreed and enjoined the change.

Appellant's principal argument appears to be that its mandatory leave requirement is not a change affecting voting within the meaning of § 5. But our decisions that § 5 reaches any state enactment affecting elections "in even a minor way," Allen, 393 U.S., at 566, including minor restrictions on candidacy, see Hadnott v. Amos, 394 U.S. 358; Whitely v. Williams, 393 U.S. 544 (both of which involved changes in the dates by which candidacy must be announced), establish the argument's lack of merit.

Although not raised explicitly, appellant may also be arguing that it is not the type of political unit that is subject to § 5. Sheffield's holding that § 5 applies to all political units with power over any aspect of the electoral process within a designated State like Georgia is dispositive.

I will vote to affirm summarily.

Sincerely,

*This decision obviously should not be  
affirmed summarily. The only question  
in my mind is whether to Note or  
reverse summarily. I doubt that the case will be worth  
plenary consideration, but the papers at this stage are so  
sparse that I disfavor summary reversal. At least with  
plenary consideration you will get amicus brief. (over)*

Supreme Court of the United States.

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 1, 1977

Re: No. 76-1662, United States v. Sheffield  
Board of Comm'rs.

Dear Bill,

I am glad to join your opinion for the  
Court.

Sincerely yours,

*P.S.*

Mr. Justice Brennan

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 1, 1977

Re: No. 76-1662 - United States v. Board of  
Commissioners of Sheffield

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 30, 1977

Re: No. 76-1662, United States v. Board of Commissioners of  
Sheffield, Alabama

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Rochester, Minnesota  
December 12, 1977

Re: No. 76-1662 - U.S. v. Board of Commissioners  
of Sheffield, Alabama

Dear Bill:

Please join me. I am writing a two-sentence concurrence which will be around shortly.

Because, however, of my solemn pledge to Henry Putzel, jr., and because of my compact with the shade of Noah Webster, my joinder is expressly conditioned upon the elimination of "that word" in the 8th line of note 26 on page 25. As they have always said out here in Bloomer, Wisconsin, "parameter don't mean boundary." Please?

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

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: 12/13/77

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	}	On Appeal from the United
v.		States District Court for
Board of Commissioners of Sheffield, Alabama, et al., Appellees.		the Northern District of Alabama.

[January —, 1978]

MR. JUSTICE BLACKMUN, concurring.

Although I find this case to be closer than much of the language of the Court's opinion would indicate, I nevertheless join that opinion. I do so because I feel that whatever contrary argument might have been made persuasively on the § 5 issue a decade ago, the Court's decisions since then and the re-enactments by Congress, see *ante*, pp. 20-24, compel the result the Court reaches today.

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: DEC 30 1977

1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
<i>v.</i>	
Board of Commissioners of Shef-	States District Court for
field, Alabama, et al., Appellees.	the Northern District of
	Alabama.

[January —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

Given the Court's reading of the Voting Rights Act in prior decisions, and particularly in *Allen v. State Board of Elections*, 393 U. S. 544 (1969), and *Perkins v. Matthews*, 400 U. S. 379 (1971), I concur in the judgment of the Court. In addition, I concur in Part III of the Court's opinion.

Although my reservations as to the constitutionality of the Act have not abated,\* I believe today's decision to be correct under this Court's precedents and necessary in order to effectuate the purposes of the Act, as construed in *Allen* and *Perkins*. In view of these purposes it does not make sense to limit the preclearance requirement to ~~those~~ political units charged with voter registration. As the majority observes, *ante*, at 13, such a construction of the statute could enable covered States or political subdivisions to delegate responsibility for changing the electoral process to local entities that do not conduct voter registration. A covered State or political subdivision thereby could achieve through its instrumentalities what it could not do itself without preclearance.

I agree with the Court that a more sensible construction of § 5, in view of and in accord with the statute's purpose, is to treat the governmental units responsible for changes in the

\*See *Allen v. State Board of Elections*, *supra*, at 595 (Black, J., dissenting); *Georgia v. U. S.*, 411 U. S. 526, 545 (1973) (Powell, J., dissenting).

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: 1-5-78

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Shef-	} States District Court for
field, Alabama, et al., Appellees.	
	} the Northern District of
	} Alabama.

[January —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

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I agree with the Court that a more sensible construction of § 5, in view of and in accord with the statute's purpose, is to treat the governmental units responsible for changes in the

\*See *Allen v. State Board of Elections*, *supra*, at 595 (Black, J., dissenting); *Georgia v. U. S.*, 411 U. S. 526, 545 (1973) (Powell, J., dissenting).

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: 6 JAN 1978

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	}	On Appeal from the United
<i>v.</i>		States District Court for
Board of Commissioners of Shef-		the Northern District of
field, Alabama, et al., Appellees.		Alabama.

[January —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

Given the Court's reading of the Voting Rights Act in prior decisions, and particularly in *Allen v. State Board of Elections*, 393 U. S. 544 (1969), and *Perkins v. Matthews*, 400 U. S. 379 (1971), I concur in the judgment of the Court. In addition, I concur in Part III of the Court's opinion.

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\*See *Allen v. State Board of Elections*, *supra*, at 595 (Black, J., dissenting); *Georgia v. U. S.*, 411 U. S. 526, 545 (1973) (Powell, J., dissenting). My reservations relate not to the commendable purpose of the Act but to its selective coverage of certain States only and to the intrusive preclearance procedure.

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: **3** FEB 1978

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Shef-	} States District Court for
field, Alabama, et al., Appellees.	
	} the Northern District of
	} Alabama.

[January —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

Given the Court's reading of the Voting Rights Act in prior decisions, and particularly in *Allen v. State Board of Elections*, 393 U. S. 544 (1969), and *Perkins v. Matthews*, 400 U. S. 379 (1971), I concur in the judgment of the Court. In addition, I concur in Part III of the Court's opinion.

Although my reservations as to the constitutionality of the Act have not abated,\* I believe today's decision to be correct under this Court's precedents and necessary in order to effectuate the purposes of the Act, as construed in *Allen* and *Perkins*. In view of these purposes it does not make sense to limit the preclearance requirement to political units charged with voter registration. As the majority observes, *ante*, at 13, such a construction of the statute could enable covered States or political subdivisions to allow local entities that do not

\*See *Allen v. State Board of Elections*, *supra*, at 595 (Black, J., dissenting); *Georgia v. U. S.*, 411 U. S. 526, 545 (1973) (Powell, J., dissenting). My reservations relate not to the commendable purpose of the Act but to its selective coverage of certain States only and to the intrusive preclearance procedure.

I agree with much of what MR. JUSTICE STEVENS says in dissent, but unless the Court is willing to overrule *Allen* and its progeny—a step it has refrained from taking—I view those decisions as foreshadowing if not compelling the Court's judgment today. I nevertheless record my total agreement with MR. JUSTICE STEVENS' view of the Act's preclearance requirement, *post*, at 1-2.



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 8, 1978

Re: No. 76-1662 - United States v. Board of Commissioners

Dear John:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: FEB 1 1978

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Sheffield, Alabama, et al., Appellees.	States District Court for the Northern District of Alabama.

[February —, 1978]

MR. JUSTICE STEVENS, dissenting.

The principal question presented by this case is whether the city of Sheffield, Ala., is covered by § 5 of the Voting Rights Act of 1965.<sup>1</sup> If that question could be answered solely by reference to the Act's broad remedial purposes, it might be an easy one. But on the basis of the statute as written, the question is not nearly as simple as the Court implies. I believe it requires two separate inquiries; first, whether the city of Sheffield is a "political subdivision" within the meaning of § 5, and second, even if that question is answered in the negative, whether action by the city should be regarded as action of the State within the meaning of that section.

### I

Briefly stated, § 5 provides that whenever a State or a political subdivision, designated pursuant to § 4, seeks to change a voting practice, it must obtain clearance for that change from either the United States District Court for the District of Columbia or the Attorney General of the United States.<sup>2</sup> This so-called "pre-clearance" requirement is one of the most extraordinary remedial provisions in an Act noted for its broad remedies. Even the Department of Justice has

<sup>1</sup> The second question is, I believe, correctly answered in Part III of the Court's opinion.

<sup>2</sup> See *ante*, at 1 n. 1.

✓  
STYLISTIC CHANGES THROUGHOUT

pp. 1-6, 8-10

footnotes renumbered.

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

From: Mr. Justice Stevens

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

4th DRAFT

Recirculated: MAR 1 1978

## SUPREME COURT OF THE UNITED STATES

No. 76-1662

United States, Appellant,	} On Appeal from the United
v.	
Board of Commissioners of Sheffield, Alabama, et al., Appellees.	States District Court for the Northern District of Alabama.

[February —, 1978]

MR. JUSTICE STEVENS, with whom MR. CHIEF JUSTICE BURGER and MR. JUSTICE REHNQUIST join, dissenting.

The principal question presented by this case is whether the city of Sheffield, Ala., is covered by § 5 of the Voting Rights Act of 1965.<sup>1</sup> If that question could be answered solely by reference to the Act's broad remedial purposes, it might be an easy one. But on the basis of the statute as written, the question is not nearly as simple as the Court implies. I believe it requires two separate inquiries: First, whether the city of Sheffield is a "political subdivision" within the meaning of § 5; and second, even if that question is answered in the negative, whether action by the city should be regarded as action of the State within the meaning of that section.

### I

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<sup>2</sup> See *ante*, at 1 n. 1.