

# The Burger Court Opinion Writing Database

## *Hicklin v. Orbeck*

437 U.S. 518 (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

June 10, 1978

Re: 77-324 - Hicklin v. Orbeck

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized script.

Mr. Justice Brennan

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 5/31/78

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SUPREME COURT OF THE UNITED STATES

No. 77-324

Sidney S. Hicklin et al., )  
Appellants, ) On Appeal from the  
v. ) Supreme Court of  
Edmund Orbeck et al ) the State of Alaska

[May \_\_, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1972, professedly for the purpose of reducing unemployment in the State, the Alaska Legislature passed an Act entitled "Local Hire Under State Leases." Alaska Stat. Ann. §§ 38.40.10 to 38.40.90 (1977). The key provision of "Alaska Hire," as the Act has come to be known, is the requirement that "all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements or any renegotiations of any of the preceding to which the state is a party" contain a provision requiring "the hiring of qualified

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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

From: Mr. Justice Brennan

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

Recirculated: 6/5/78

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-324

Sidney S. Hicklin et al., Appellants, v. Edmund Orbeck, Commissioner of the Department of Labor of Alaska, et al.	}	On Appeal from the Su- preme Court of Alaska.
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[June —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1972, professedly for the purpose of reducing unemployment in the State, the Alaska Legislature passed an Act entitled "Local Hire Under State Leases." Alaska Stat. Ann. §§ 38.40.10 to 38.40.90 (1977). The key provision of "Alaska Hire," as the Act has come to be known, is the requirement that "all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements or any renegotiations of any of the preceding to which the state is a party" contain a provision requiring "the hiring of qualified Alaska residents" in preference to nonresidents.<sup>1</sup> Alaska Stat. Ann. § 38.40.030 (a).<sup>2</sup> This employment preference is adminis-

<sup>1</sup> The regulations implementing the Act further require that all nonresidents be laid off before any resident "working in the same trade or craft" is terminated: "[T]he nonresident may be retained only if no resident employee is qualified to fill the position." 8 Alaska Admin. Code 35.011 (1977). See also 8 Alaska Admin. Code 35.042 (4).

<sup>2</sup> The complete text of § 38.40.030 (a) is as follows:

"In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of

HH

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 77-324 - Hicklin v. Orbeck

The sole case held for Hicklin is (No. 76-1606, Consumers Union v. Heimann). This is an appeal from a three-judge court decision (SDNY) upholding a New York statute (§ 268 of the New York Banking Law) that restricts the sale of savings bank life insurance ("SBLI") to persons who reside or regularly work in New York State. Appellants challenge the law under the Commerce Clause and the Privileges and Immunities Clause of Art. IV, § 2.

Savings banks in New York are authorized to sell life insurance. Actuarial and administrative services are performed by the bank-financed Savings Bank Life Insurance Fund. The State of New York does not subsidize the Fund or the SBLI system; indeed, § 270 of the Banking Law forbids the use of public moneys for the SBLI system. Although the regulatory requirements imposed on issuers of SBLI are essentially the same as those imposed on other issuers of life insurance in New York, SBLI insurance is generally less expensive than other forms of insurance because it is sold by salaried personnel over the counter and because it has a relatively low termination rate.

Because the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, appears to take the regulation of the savings bank-policyholder relationship encompassed in § 268 outside the purview of the Commerce Clause, see SEC v. National Securities, Inc., 393 U.S. 453, 458-460 (1969), I believe that appellants' Commerce Clause challenge is insubstantial. I am, however, troubled by the District Court's treatment of appellants' privileges and immunities challenge. In Toomer v. Witsell, 334 U.S. 385 (1948), this Court established that "one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that state." Id. at 396. Hicklin makes clear that a State's discrimination against nonresidents is impermissible unless (1) the presence or activity of nonresidents is the source or cause of the

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1978

No. 77-324, Hicklin v. Orbeck

Dear Bill,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1978

Re: No. 77-324 — Sidney S. Hicklin, et al.  
v. Edmund Orbeck, et al.

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Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 2, 1978

Re: No. 77-324 - Hicklin v. Orbeck

Dear Bill:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 13, 1978

Re: No. 77-324 - Hicklin v. Orbeck

Dear Bill:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 5, 1978

No. 77-324 Hicklin v. Orbeck

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

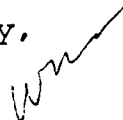
June 13, 1978

Re: No. 77-324 Hicklin v. Orbeck

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 1, 1978

Re: 77-324 - Hicklin v. Orbeck

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

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