The Burger Court Opinion Writing Database

Dougherty County Board of Education v. White

439 U.S. 32 (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

November 14, 1978

Memorandum to the Conference

Re: 77-120 Dougherty County Georgia Board of Ed. v. White

I will await Lewis Powell's dissent.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

November 20, 1978

Re: 77-120 - Dougherty Co. Bd. of Education
v. White

Dear Lewis:

I join your dissent.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 27, 1978

RE: No. 77-120 Dougherty County, etc. v. White

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 14, 1978

Re: No. 77-120, Dougherty County, Ga.
Bd. of Ed. v. White

Dear Thurgood,

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

"Mr. Justice Stewart dissents for the reasons expressed in Part I of the dissenting opinion of Mr. Justice Powell."

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 27, 1978

Re: No. 77-120 - Dougherty County,
Georgia Board of Education
v. John E. White

Dear Thurgood,

Please join me.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[October —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under § 5 of the Voting Rights Act of 1965,[1] all States and

[1] 79 Stat. 439, as amended, 42 U. S. C. § 1973c. Section 5 provides in part:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in [§ 4 (a) of the Act] based upon determinations made under the first sentence of [§ 4 (b) of the Act] 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 such submission, the Attorney General has affirmatively indicated that such objection will not be made. . . ."

— PP 3, 10

27 OCT 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, v. John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[October —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under § 5 of the Voting Rights Act of 1965,[1] all States and

[1] 79 Stat. 439, as amended, 42 U. S. C. § 1973c. Section 5 provides in part:

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P. 2,3,7

30 OCT 1978

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[October —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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9, 10, 12, 14, 15

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[October —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court. Under § 5 of the Voting Rights Act of 1965,[1] all States and

[1] 79 Stat. 439, as amended, 42 U. S. C. § 1973c. Section 5 provides in part:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in [§ 4 (a) of the Act] based upon determinations made under the first sentence of [§ 4 (b) of the Act] 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 such submission, the Attorney General has affirmatively indicated that such objection will not be made. . . ."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 30, 1978

Re: No. 77-120 - Dougherty County Board of Education
v. White

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 26, 1978

No. 77-120 Dougherty County v. White

Dear Thurgood:

In due time I will circulate a dissenting opinion.

Sincerely,

L. Lewis

Mr. Justice Marshall

Copies to the Conference

LFP/lab

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: 14 NOV 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.

On Appeal from the United States District Court for the Middle District of Georgia.

[November —, 1978]

MR. JUSTICE POWELL, dissenting.

Today the Court again expands the reach of the Voting Rights Act of 1965, ruling that a local board of education with no authority over any electoral system must obtain federal clearance of its personnel rule requiring employees to take leaves of absence while campaigning for political office. The Court's ruling is without support in the language or legislative history of the Act. Moreover, although prior decisions of the Court have taken liberties with this language and history, today's decision is without precedent.

I

Standard, Practice, or Procedure

Section 5 requires federal preclearance before a "political subdivision" of a State covered by § 4 of the Act may enforce a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . ." This provision marked a radical departure from traditional notions of constitutional federalism, a departure several Members of this Court have regarded as unconstitutional.[1] Indeed,

[1] Mr. Justice Black believed that the preclearance requirement of § 5 "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal powers meaningless." See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 358

Changes 1, 2

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: 15 NOV 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[November —, 1978]

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

Today the Court again expands the reach of the Voting Rights Act of 1965, ruling that a local board of education with no authority over any electoral system must obtain federal clearance of its personnel rule requiring employees to take leaves of absence while campaigning for political office. The Court's ruling is without support in the language or legislative history of the Act. Moreover, although prior decisions of the Court have taken liberties with this language and history, today's decision is without precedent.

I

Standard, Practice, or Procedure

Section 5 requires federal preclearance before a "political subdivision" of a State covered by § 4 of the Act may enforce a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . ." This provision marked a radical departure from traditional notions of constitutional federalism, a departure several Members of this Court have regarded as unconstitutional.[1] Indeed,

[1] Mr. Justice Black believed that the preclearance requirement of § 5 "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal powers meaningless." See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 358

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 21 NOV 1978

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[November —, 1978]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

Today the Court again expands the reach of the Voting Rights Act of 1965, ruling that a local board of education with no authority over any electoral system must obtain federal clearance of its personnel rule requiring employees to take leaves of absence while campaigning for political office. The Court's ruling is without support in the language or legislative history of the Act. Moreover, although prior decisions of the Court have taken liberties with this language and history, today's decision is without precedent.

I

Standard, Practice, or Procedure

Section 5 requires federal preclearance before a "political subdivision" of a State covered by § 4 of the Act may enforce a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting . . . ." This provision marked a radical departure from traditional notions of constitutional federalism, a departure several Members of this Court have regarded as unconstitutional.[1] Indeed,

[1] Mr. Justice Black believed that the preclearance requirement of § 5 "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal powers meaningless." See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 358

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 14, 1978

Re: No. 77-120 Dougherty County v. White

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 27, 1978

Re: 77-120 - Dougherty County, Georgia Board of Education v. White

Dear Thurgood:

Please join me.

Respectfully,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 27, 1978

Re: 77-120 - Dougherty County, Georgia Board of Education v. White

Dear Thurgood:

In my judgment your opinion is unanswerable and therefore I shall join it. I would be grateful, however, if you could make one slight change in the sentence at the bottom of page 7 in order to accommodate a concern I expressed in my dissent in Sheffield. Could you revise the sentence to read this way?

> "Given the central role of the Attorney General in formulating and implementing § 5, this interpretation is entitled to particular deference."

I will join even if you don't make the change, but it would make me a little more comfortable.

Respectfully,

Mr. Justice Marshall

P.S. I have sent the enclosed concurrence to the Printer.

(Draft #1--JPS)

77-120 - Dougherty County, Georgia Board of Education v. White

MR. JUSTICE STEVENS, concurring.

Although I remain convinced that the Court's construction of the statute does not accurately reflect the intent of the Congress that enacted it, see United States v. Sheffield Board of Commissioners, 435 U.S. 110, 140-150 (STEVENS, J., dissenting), MR. JUSTICE MARSHALL has demonstrated that the rationale of the Court's prior decisions compels the result it reaches today. Accordingly, I join his opinion for the Court.

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: OCT 30 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–120

Dougherty County, Georgia Board of Education, et al., Appellants, *v.* John E. White.	On Appeal from the United States District Court for the Middle District of Georgia.

[November —, 1978]

MR. JUSTICE STEVENS, concurring.

Although I remain convinced that the Court's construction of the statute does not accurately reflect the intent of the Congress that enacted it, see *United States* v. *Sheffield Board of Commissioners*, 435 U. S. 110, 140–150 (STEVENS, J., dissenting), MR. JUSTICE MARSHALL has demonstrated that the rationale of the Court's prior decisions compels the result it reaches today. Accordingly, I join his opinion for the Court.