

# The Burger Court Opinion Writing Database

*Babbitt v. Farm Workers*

442 U.S. 289 (1979)

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

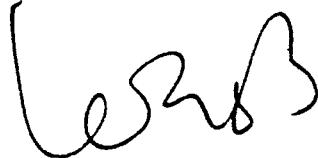
May 26, 1979

Dear Byron:

Re: 78-225 Babitt v. United Farm Workers

I join.

Regards,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

April 30, 1979

RE: No. 78-225 Babbitt v. United Farm Workers  
National Union

Dear Byron:

I am sorry but I cannot agree that abstention is appropriate with respect to sections 1385(B)(8) and 1392. Should your opinion acquire a majority on these issues I will write a dissent.

Sincerely,



Mr. Justice White

cc: The Conference

Re: The Conservation  
Mr. Justice BRENNAN  
Mr. Justice STEVENS  
Mr. Justice MARSHALL  
Mr. Justice BLACKMUN  
Mr. Justice POWELL  
Mr. Justice BURGER  
Mr. Justice REHNQUIST  
Mr. Justice FORD  
Mr. Justice CLARK  
Mr. Justice BRENNAN  
Mr. Justice STEVENS  
Mr. Justice MARSHALL  
Mr. Justice BLACKMUN  
Mr. Justice POWELL  
Mr. Justice BURGER  
Mr. Justice REHNQUIST  
Mr. Justice CLARK

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 78-225**

Bruce Babbitt, Governor of the  
State of Arizona, et al.,  
Appellants,  
*v.*  
United Farm Workers National  
Union, Etc., et al. } On Appeal from the United  
States District Court for  
the District of Arizona.

[May —, 1979]

MR. JUSTICE BRENNAN, concurring in part and dissenting  
in part.

I join the opinion of the Court, with the exception that I  
respectfully dissent from the Court's holding that the District  
Court should have abstained and postponed resolution of ap-  
pellees' constitutional challenge to § 23-1392, Ariz. Rev. Stat.  
Ann. (Supp. 1978), until this statutory provision had been  
construed by the Arizona courts.

It must be stressed that "[a]bstention from the exercise of  
federal jurisdiction is the exception, not the rule. 'The doc-  
trine of abstention . . . is an extraordinary and narrow excep-  
tion to the duty of a District Court to adjudicate a contro-  
versy properly before it. . . . *County of Allegheny v. Frank  
Mashuda Co.*, 360 U. S. 185, 188 (1959).'" *Colorado River  
Water Conservation District v. United States*, 424 U. S. 800,  
813 (1976). If a state statute is susceptible to a construction  
that would avoid or significantly alter a constitutional issue,  
however, abstention is appropriate to avoid needless friction  
"between federal pronouncements and state policies." *Reetz  
v. Bozanich*, 397 U. S. 82, 87 (1970). But, as the Court today  
correctly points out, the state statute at issue must be "'fairly  
subject to an interpretation which will render unnecessary  
or substantially modify the federal constitutional question,'  
[*Harman v. Forssenius*, 380 U. S. 528.] 534 [1965]." *Ante*,

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

From: Mr. Justice

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Circulated: 2.1.8

No. 78-225

Bruce Babbitt, Governor of the  
State of Arizona, et al.,  
Appellants,  
v.  
United Farm Workers National  
Union, Etc., et al. } On Appeal from the United  
States District Court for  
the District of Arizona.

[May —, 1979]

MR. JUSTICE BRENNAN with whom MR. JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I join the opinion of the Court, with the exception that I respectfully dissent from the Court's holding that the District Court should have abstained and postponed resolution of appellees' constitutional challenge to § 28-1392, Ariz. Rev. Stat. Ann. (Supp. 1978), until this statutory provision had been construed by the Arizona courts.

It must be stressed that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule. 'The doctrine of abstention . . . is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. . . . *County of Allegheny v. Frank Mashuda Co.*, 360 U. S. 185, 188 (1959).'" *Colorado River Water Conservation District v. United States*, 424 U. S. 800, 813 (1976). If a state statute is susceptible of a construction that would avoid or significantly alter a constitutional issue, however, abstention is appropriate to avoid needless friction "between federal pronouncements and state policies." *Reetz v. Bozanich*, 397 U. S. 82, 87 (1976). But, as the Court today correctly points out, the state statute at issue must be "fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question." *[Harman v. Forssenius*, 380 U. S. 528, 534 (1965).] *Ante*,

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 30, 1979

Re: 78-225 - Babbitt v. Farm Workers

Dear Byron:

We all owe you a debt of gratitude for working your way so carefully through this morass. I continue to have considerable doubt about abstention on the consumer publicity provision, but shall acquiesce in your proposed opinion, subject to seeing what may be written by someone else on that issue.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 27, 1979

Re: No. 78-225 - Babbitt v. UFW, etc.

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Memorandum to the Conference

My notes indicate that the voting on this case was scattered and uncertain, and it may be that the enclosed proposal does not wholly correspond with any of the views expressed at Conference, including mine. But it does represent something I could live with, if at least four others could.



BRW

cmc

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

From: Mr. Justice White

Circulated: 27 APR 1979

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 78-225

Bruce Babbitt, Governor of the  
State of Arizona, et al.,  
Appellants,  
*v.*  
United Farm Workers National  
Union, Etc., et al. } On Appeal from the United  
States District Court for  
the District of Arizona.

[May —, 1979]

MR. JUSTICE WHITE proposing an opinion for the Court.

In this case we review the decision of a three-judge District Court setting aside as unconstitutional Arizona's farm labor statute. The District Court perceived particular constitutional problems with five provisions of the Act; deeming these provisions inseparable from the remainder of the Act, the court declared the entire Act unconstitutional and enjoined its enforcement. We conclude that the challenges to two of the provisions specifically invalidated did not present a case or controversy within the jurisdiction of a federal court and hence should not have been adjudicated. Although the attacks on two other provisions were justiciable, we conclude that the District Court should have abstained from deciding the federal issues posed until material, unresolved questions of state law were determined by the Arizona courts. Finally, we believe the District Court properly reached the merits of the fifth provision but erred in invalidating it. Accordingly, we reverse the judgment of the District Court.

**I**

In 1972, the Arizona Legislature enacted a comprehensive scheme for the regulation of agricultural employment rela-

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 10, 1979

Re: 78-225 - Babbitt v. United Farm Workers

Dear Bill,

In your partial dissent, you suggest that § 1392, the criminal provision, is definite and needs no construction and that abstention is therefore improper. But the District Court invalidated § 1392 on vagueness grounds, and the state's position with respect to the question is such that I am not as ready as you are to concede that the vagueness attack as it relates directly to § 1392 is without substance and that hence there is no ambiguity warranting abstention.

If there were to be no abstention with respect to § 1392 on the grounds that it clearly criminalizes any violation of any provision of the Act, the District Court thus being wrong in holding the section vague, adequate consideration of the section's constitutionality would require inquiry into whether some conduct prohibited by the Act is constitutionally protected against criminal punishment. But that would mean dealing with the validity of provisions about which no case or controversy has been shown or on which abstention has been deemed proper.

I am sending to the printer a footnote along the above lines.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

cmc

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

— p. 17, footnotes renumbered —

From: Mr. Justice White

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

Recirculated: 14 MAY 1979

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 78-225

Bruce Babbitt, Governor of the  
State of Arizona, et al.,  
Appellants,  
*v.*  
United Farm Workers National  
Union, Etc., et al. } On Appeal from the United  
States District Court for  
the District of Arizona.

[May —, 1979]

Mr. JUSTICE WHITE ~~proposing~~ delivered the opinion for the Court.

In this case we review the decision of a three-judge District Court setting aside as unconstitutional Arizona's farm labor statute. The District Court perceived particular constitutional problems with five provisions of the Act; deeming these provisions inseparable from the remainder of the Act, the court declared the entire Act unconstitutional and enjoined its enforcement. We conclude that the challenges to two of the provisions specifically invalidated did not present a case or controversy within the jurisdiction of a federal court and hence should not have been adjudicated. Although the attacks on two other provisions were justiciable, we conclude that the District Court should have abstained from deciding the federal issues posed until material, unresolved questions of state law were determined by the Arizona courts. Finally, we believe the District Court properly reached the merits of the fifth provision but erred in invalidating it. Accordingly, we reverse the judgment of the District Court.

I

In 1972, the Arizona Legislature enacted a comprehensive scheme for the regulation of agricultural employment rela-

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 7, 1979

MEMORANDUM TO THE CONFERENCE

Re: Babbitt v. United Farm Workers National Union,  
No. 78-931

The only case being held for Babbitt v. UFW, No. 78-225, is Babbitt v. UFW, No. 78-931, which involves an award of attorney's fees arising out of the litigation adjudicated in No. 78-225. In No. 78-931, appellants seek reversal of an attorney's fees award entered under 42 U.S.C. § 1988 against the original defendants below as well as against parties who intervened on the side of those defendants. Both sides recognize that there will be no need for this Court to decide the issues raised in No. 78-931 if the Court reverses in No. 78-225 because appellees will no longer be the prevailing parties. Since we have reversed and remanded in No. 78-225, I recommend that we vacate the judgment in No. 78-931 and remand the case to the district court.

Sincerely,



Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

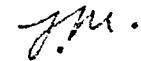
May 11, 1979

Re: No. 78-225 - Babbitt v. United Farm Workers

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

May 9, 1979

Re: No. 78-225 - Babbitt v. United Farm Workers

Dear Byron:

I join the others in commending you for your labor in this confused area. It seems to me that this is an instance where postargument work in depth has produced results not within easy reach prior to argument.

Although my tentative conference vote was not in line as to every detail with the results in your proposed opinion, I am generally with you now. My remaining doubt concerns only the criminal liability provision, § 23-1392. Following Potter's lead, I shall acquiesce in your proposed opinion subject to seeing what may be written by someone else on that issue. As to all other issues, I am with you, and you may regard this letter as a joinder to that large extent.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 14, 1979

Re: No. 78-225 - Babbitt v. United Farm Workers

Dear Byron:

You now have four full votes to join. I think we need a Court in this one, and I am glad to make the fifth vote.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 26, 1979

No. 78-225 Babbitt v. United Farm Workers

MEMORANDUM TO THE CONFERENCE

Having given further thought over the weekend to some of the opaque issues in this case, I now agree with John that Pullman abstention is the wiser position for us to take with respect to § 1385 B8.

This provision makes it an unlawful labor practice for a union "to induce or encourage" a consumer boycott "by the use of dishonest, untruthful and deceptive publicity." This is rather sweeping language that, without more, could be viewed as a facially invalid prior restraint. But the criminal penalty, § 1392, imposed for a violation of any provision of the Act, can be construed to apply only to willful violation. I take this to mean that the violation must be purposeful or intentional, and as so construed I would think the prohibition against untruthful or deceptive publicity is valid.

Noncriminal enforcement of § 1385 B8 would be accomplished, as I understand it, by injunction. But apart from the inconvenience of a limited TRO, an injunction would not issue until there had been an opportunity for a court to decide whether in fact the speech was "dishonest, untruthful or deceptive". Moreover, we are talking here primarily about commercial speech, and our cases make clear the importance of the state interest in assuring that this type of speech is not deceptive or false.

In sum, I think it is premature to conclude that § 1385 B8, as implemented by § 1392, is facially invalid. I think Pullman abstention, affording the state court an opportunity to construe these provisions, is the appropriate answer.

As to the provisions of the Act with respect to representation elections, access to employers' premises, and mandatory arbitration, I am fairly flexible. I doubt that we have a case or controversy with respect to any of these issues, and - as presently advised - could join an opinion to this effect. Further consideration, however, could well persuade me to include these in an abstention remand for consideration by the state courts.

If a majority of the Court reached the merits with respect to any of these subjects (and if I am persuaded they are properly here), I would hold that the provisions of the Arizona Act with respect to each of them are valid.

Sincerely,



Copies to the Conference

LFP/lab

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 1, 1979

78-225 Babbitt v. United Farm Workers

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 11, 1979

Re: No. 78-225 - Babbitt v. United Farm Workers

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 27, 1979

Re: 78-225 - Babbitt v. United Farm Workers  
National Union

Dear Byron:

Even if your proposed opinion does not completely correspond with our Conference discussion, I think you have done a commendable job of trying to work out a solution that should command a consensus. Please join me.

Respectfully,

Mr. Justice White

Copies to the Conference