The Burger Court Opinion Writing Database

United States v. Helstoski

442 U.S. 477 (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

March 28, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-349 U.S. v. Helstoski
78-546 Helstoski v. Meanor

I was not surprised to receive the enclosed memorandum today from the Solicitor General. When he responded on this point, I thought it was one of those things that happen when four or five "inquisitors" are at you.

Regards,

Office of the Solicitor General
Washington, D.C. 20530

March 27, 1979

Honorable Michael Rodak, Jr.
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: United States v. Helstoski, No. 78-349
Helstoski v. Meanor, No. 78-546

Dear Mr. Rodak:

My response to a question asked during the oral argument in this case may have left the impression that the government has decided to abandon the contentions made in Part I(B) of the Brief for the United States, pages 76-88. The purpose of this letter is to affirm that in all respects the position of the United States remains that stated in the government's brief. I regret any confusion that may have arisen during the oral argument.

Sincerely yours,

Wade H. McCree, Jr.
Solicitor General

cc: Morton Stavis, Esq.
744 Broad Street
Newark, New Jersey 07102

Stanley M. Brand, Esq.
General Counsel to the Clerk
U.S. House of Representatives
Washington, D.C. 20515

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

From: The Chief Justice

Circulated: MAY 25 1979

Recirculated: _____

No. 78-349, United States v. Helstoski

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause[1/] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a

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1/ The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Article 1, § 6.

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

From: The Chief Justice

Circulated: _____

Recirculated: MAY 29 [illegible]

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause [1] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a Member, accepted money in return for promising to introduce and introducing private bills.[2]

I

Respondent Helstoski is a former Member of the United States House of Representative from New Jersey. In 1974, while Helstoski was a Member of the House, the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

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[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Article 1, § 6.

[2] This case was argued in tandem with No. 78-546, *Helstoski* v. *Meanor*, which involves the question of whether mandamus is an appropriate means of challenging the validity of an indictment on the ground that it violates the Speech or Debate Clause of the Constitution.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1979

Re: No. 78-349, United States v. Helstoski

MEMORANDUM TO THE CONFERENCE

I plan to add a footnote along the following lines after the second sentence in the third paragraph on page 10. [The sentence reads, "The Speech or Debate Clause was designed to make it difficult, if not impossible, for the Executive to prosecute a Member of either House for legislative acts."]

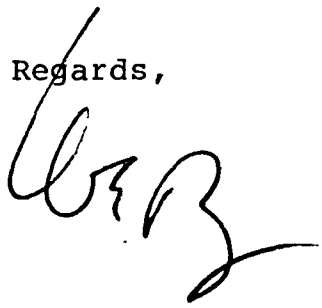
*/MR. JUSTICE STEVENS suggests that our holding is broader than the Speech or Debate Clause requires. In his view, "it is illogical to adopt rules of evidence that will allow a Member of Congress to immunize himself from conviction [for bribery] simply by inserting references to past legislative acts in all communications thus rendering all such evidence inadmissible." Nothing in our opinion remotely, by any conceivable reading, prohibits excising references to legislative acts, so that the remainder of the evidence would be admissible. This is a familiar process in the admission of documentary evidence. Of course a corrupt legislator can use the Speech or Debate Clause as a shield against prosecution by the Executive Branch, but only for utterances within the scope of legislative acts as defined in our holdings. That is what the Clause is all about. The Clause is also a shield for libel and beyond doubt it "has enabled reckless men to slander and even destroy others with impunity, but that was the conscious choice of the Framers." United States v. Brewster, 408 U.S., at 516. It should be emphasized that nothing in our holding today immunizes a Member from punishment by the House or the Senate by disciplinary action including exclusion from the Member's seat.

I also plan to add paragraphs along the following lines after the first full paragraph on page 11.

MR. JUSTICE STEVENS misconstrues our holdings on the Speech or Debate Clause in stating, "The admissibility line should be based on the purpose of the offer rather than the specificity of the reference." Slip op. at 3. The Speech or Debate Clause does not refer to the prosecutor's purpose in offering evidence. The Clause does not say, "No proof of a legislative act shall be offered." The prohibition of the Clause is far broader; it provides that Members "shall not be questioned in any other place." Indeed, as MR. JUSTICE STEVENS recognizes, the admission of evidence of legislative acts "may reveal [to the jury] some information about the performance of legislative acts and the legislator's motivation in conducting official duties." Slip op. at 3. Revealing information as to a true legislative act -- speaking or debating -- to a jury subjects a Member to being "questioned" in a place other than the House or Senate and draws in question the Member's legislative acts, thereby violating the Speech or Debate Clause.

Furthermore, as to what restrictions the Clause places on the admission of evidence, our concern is not with the "specificity" of the reference. Instead, our concern is whether there is mention of a true legislative act. The Clause tells us only that "for any Speech or Debate in either House, [the Member] shall not be questioned in any other Place." To effectuate the intent of the Clause, the Court has construed it to protect other "legislative acts" such as utterances in committee hearings and reports. But it is clear from the language of the Clause that protection extends only to an act that has been performed. A promise to deliver a speech, to vote, or to solicit other votes is neither speech nor debate. Likewise, a promise to introduce a bill at some future date is not a legislative act. Thus, in light of the strictures of Johnson and Brewster, the District Court order prohibiting the introduction of evidence "of the past performance of a legislative act" was redundant.

Regards,



CHANGES AS MARKED

4, 7, 12-12

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

From: The Chief Justice

Circulated: _____

Recirculated: JUN 11 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause [1] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a Member, accepted money in return for promising to introduce and introducing private bills.[2]

I

Respondent Helstoski is a former Member of the United States House of Representative from New Jersey. In 1974, while Helstoski was a Member of the House, the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

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[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Article 1, § 6.

[2] This case was argued in tandem with No. 78-546, *Helstoski* v. *Meanor*, which involves the question of whether mandamus is an appropriate means of challenging the validity of an indictment on the ground that it violates the Speech or Debate Clause of the Constitution.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1979

Re: No. 78-349, United States v. Helstoski

MEMORANDUM TO THE CONFERENCE:

One clarification seems to be in order on the second draft circulation. On page 10, third line from the bottom of the page, change the sentence to read: "Indeed, the Speech or Debate Clause was designed to preclude prosecution of Members for legislative acts.7/"

A fresh print draft will follow with other, but essentially stylistic, changes.

Regards,

WEB

CHANGES AS MARKED:

1, 10-12, 15

To: Mr. Justice [illegible]
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JUN 12 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to resolve important questions concerning the restrictions the Speech or Debate Clause [1] places on the admissibility of evidence at a trial on charges that a former Member of the House had, while a Member, accepted money in return for promising to introduce and introducing private bills.[2]

I

Respondent Helstoski is a former Member of the United States House of Representative from New Jersey. In 1974, while Helstoski was a Member of the House, the Department of Justice began investigating reported political corruption, including allegations that aliens had paid money for the introduction of private bills which would suspend the application of the immigration laws so as to allow them to remain in this country.

[1] The Speech or Debate Clause provides that "for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place." Article 1, § 6.

[2] This case was argued together with No. 78-546, *Helstoski* v. *Meanor*, which involves the question of whether mandamus is an appropriate means of challenging the validity of an indictment on the ground that it violates the Speech or Debate Clause of the Constitution.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1978

Re: No. 78-349, United States v. Helstoski

MEMORANDUM TO THE CONFERENCE:

The last sentence in footnote 7, slip opinion at 11, now reads "Nothing in our holding today, however, immunizes a Member from punishment by the House or the Senate by disciplinary action including exclusion from the Member's seat." To avoid any possible conflict with Powell v. McCormack, 395 U.S. 486 (1969), the word "exclusion" should be changed to "expulsion" in the bound volume.

Regards,

WEB

1st Draft

United States v. Helstoski

No. 78-349

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

From: Mr. Justice Brennan

Circulated: 31 MAY 1979

Recirculated: _____

MR. JUSTICE BRENNAN, dissenting.

While I have no quarrel with the Court's decision to limit the evidence which the Government may introduce at Helstoski's trial, I would go much further and order the dismissal of Helstoski's indictment altogether. "[P]roof of an agreement to be 'influenced' in the performance of legislative acts is by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial." United States v. Brewster, 408 U.S. 501, 536 (1972)(Brennan J., dissenting). I continue to adhere to the view expressed in my dissent in Brewster, and would hold that "a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves, may not be the subject of a general conspiracy prosecution." Id., at 539.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–349

United States, Petitioner, *v.* Henry Helstoski.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. JUSTICE BRENNAN, dissenting.

While I have no quarrel with the Court's decision to limit the evidence which the Government may introduce at Helstoski's trial, I would go much further and order the dismissal of Helstoski's indictment altogether. "[P]roof of an agreement to be 'influenced' in the performance of legislative acts is by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial." *United States* v. *Brewster*, 408 U. S. 501, 536 (1972) (BRENNAN J., dissenting). I continue to adhere to the view expressed in my dissent in *Brewster*, and would hold that "a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves, may not be the subject of a general conspiracy prosecution." *Id.*, at 539.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1979

Re: 78-349 - United States v. Helstoski

Dear Chief:

I shall await John's separate opinion.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1979

Re: No. 78-349, United States v. Helstoski

Dear John,

Please add my name to your separate opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1979

Re: No. 78-349 - U. S. v. Helstoski

Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1979

Re: No. 78-349 - United States v. Helstoski

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1979

No. 78-349 - United States v. Helstoski

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1979

Re: No. 78-349 - United States v. Helstoski

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1979

Re: 78-349 - United States v. Helstoski

Dear Chief:

Although I will join substantially all of your opinion, I plan to circulate a short partial dissent in the next day or two in which I take the position that evidence which merely refers to the legislative act, but is not offered for the purpose of proving the legislative act, should be admissible.

Respectfully,

The Chief Justice

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: JUN 4 79

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

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

The Court holds that *United States* v. *Brewster,* 408 U. S. 501, and *United States* v. *Johnson,* 383 U. S. 169, preclude the Government from introducing evidence of a legislative act by a Member of Congress. I agree that those cases do prevent the prosecution from attempting to prove that a legislative act was performed. I do not believe, however, that they require rejection of evidence that merely refers to legislative acts when that evidence is not offered for the purpose of proving the legislative act itself.

In *Johnson,* the Court held that a Member of Congress could not be prosecuted for conspiracy against the United States based on his preparation and delivery of an improperly motivated speech in the House of Representatives. After noting that the attention given to the speech was not merely "an incidental part of the Government's case," but rather was "an intensive judicial inquiry" into the speech's substance and motivation, *id.,* at 176–177, the Court held that the prosecution violated the express language of the Clause and the policies that underlie it. The Court carefully emphasized, however, that its decision was limited to a case of that character and "does not touch a prosecution which . . . does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them." *Id.,* at 185.

In *Brewster,* the Court held that the Speech or Debate Clause did not bar prosecution of a former Senator for receiv-

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

p. 1

From: Mr. Justice Stevens

Circulated:

2nd DRAFT

Recirculated: JUN 7 '79

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part.

The Court holds that *United States* v. *Brewster*, 408 U. S. 501, and *United States* v. *Johnson*, 383 U. S. 169, preclude the Government from introducing evidence of a legislative act by a Member of Congress. I agree that those cases do prevent the prosecution from attempting to prove that a legislative act was performed. I do not believe, however, that they require rejection of evidence that merely refers to legislative acts when that evidence is not offered for the purpose of proving the legislative act itself.

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3, 5

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-349

United States, Petitioner, v. Henry Helstoski. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part.

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