

The Burger Court Opinion Writing Database

Hutchinson v. Proxmire

443 U.S. 111 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Mr. Justice S^tevens
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

1st DRAFT

Circulated: MAY 26 1979

SUPREME COURT OF THE UNITED STATES

Recirculated:

No. 78-680

Ronald R. Hutchinson,
Petitioner,
v.
William Proxmire and
Morton Schwartz. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[June —, 1979]

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

We granted certiorari, — U. S. — (1978), to resolve three issues: (1) Whether a Member of Congress is protected by the Speech or Debate Clause of the Constitution, Art. I, § 6, against suits for allegedly defamatory statements made by the Member in press releases and newsletters; (2) Whether petitioner Hutchinson is either a "public figure" or a "public official," thereby making applicable the "actual malice" standard of *New York Times v. Sullivan*, 376 U. S. 254 (1964);¹ and (3) Whether respondents were entitled to summary judgment.

Ronald Hutchinson, a research behavioral scientist, sued respondents, William Proxmire, a United States Senator, and his legislative assistant, Morton Schwartz, for defamation arising out of Proxmire's giving what he called his "Golden Fleece" award. The "award" went to federal agencies that

cap.

cap.

¹ Neither the District Court nor the Court of Appeals considered whether the standard of *New York Times v. Sullivan*, 376 U. S. 254 (1964), can apply to an individual defendant rather than to a media defendant. At oral argument, counsel for Hutchinson stated that he had not conceded that the *New York Times* standard did apply. Tr. of Oral Arg. 18. We express no opinion on the issue.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-680 Hutchinson v. Proxmire

I overlooked calling attention to the "public figure" issue in this case.

My notes indicate a substantial number--but perhaps not five--thought respondent was not a public figure. I agree but I am not sure as to the votes. If four others so vote, it will be a simple matter to add this holding.

Regards,

WSB

Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1979

Re: No. 78-680, Hutchinson v. Proxmire

Dear Lewis:

As I indicated in my post-circulation memorandum to the Conference, I would be willing to add a section to hold that Hutchinson was not a public figure, if there are five votes for that position under the circumstances of this case. There are sound reasons to dispose of that issue, which is essentially a question of law.

In response to your note, the present draft holds that the Speech or Debate Clause does not protect the newsletters or press releases. The CA7 should also realize that on remand it must consider whether the District Court correctly resolved the state law question. To avoid any uncertainty about that holding, however, I am quite willing to change the final sentence of the opinion to read: "We do not reach the other questions presented by the petition for certiorari; instead, we vacate the judgment of the Court of Appeals and remand for further proceedings consistent with this opinion, in particular, to determine whether the District Court correctly resolved the question of state law."

Bill Rehnquist's opinion in Wolston v. Reader's Digest may well have an influence on the CA7's view on remand. I will take that into account when Wolston comes around.

The comment on page 17 about the Congressional Record is, or at least I thought, a non-committal observation of the fact that everyone has access to the Congressional Record. I did not think this conflicted with note 4. However, I will see if there is need to neutralize it. Perhaps striking the phrase "copies of that speech" would do the trick.

Regards,



Mr. Justice Powell
cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1979

Dear Potter:

Re: 78-680 Hutchinson v. Proxmire

Re your memorandum of May 30 I do not really see that the final sentence of Note 14, page 16, would "be borrowing trouble" and indeed it leaves that question entirely open. However, the sentence is not essential to my point and I am quite willing to drop it.

Regards,



Mr. Justice Stewart

cc: The Conference

CHANGES AS MARKED:

1-3, 5, 7-12, 17, 18, 21-24

FOOTNOTES RENUMBERED

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 6 1973

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-680

Ronald R. Hutchinson,
Petitioner,
v.
William Proxmire and
Morton Schwartz. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[June —, 1979]

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

We granted certiorari, — U. S. — (1978), to resolve three issues: (1) Whether a Member of Congress is protected by the Speech or Debate Clause of the Constitution, Art. I, § 6, against suits for allegedly defamatory statements made by the Member in press releases and newsletters; (2) Whether petitioner Hutchinson is either a "public figure" or a "public official," thereby making applicable the "actual malice" standard of *New York Times v. Sullivan*, 376 U. S. 254 (1964); and (3) Whether respondents were entitled to summary judgment.

Ronald Hutchinson, a research behavioral scientist, sued respondents, William Proxmire, a United States Senator, and his legislative assistant, Morton Schwartz, for defamation arising out of Proxmire's giving what he called his "Golden Fleece" award. The "award" went to federal agencies that had sponsored Hutchinson's research. Hutchinson alleged that in making the award and publicizing it nationwide, respondents had libeled him, damaging him in his professional and academic standing, and had interfered with his contractual relations. The District Court granted summary judgment for respondents and the Court of Appeals affirmed.

| fn. omitted

CHANGES AS MARKED:

9, 11, 22

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-680

Ronald R. Hutchinson,
Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
William Proxmire and | Seventh Circuit.
Morton Schwartz.

[June —, 1979]

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

We granted certiorari, — U. S. — (1978), to resolve three issues: (1) Whether a Member of Congress is protected by the Speech or Debate Clause of the Constitution, Art. I, § 6, against suits for allegedly defamatory statements made by the Member in press releases and newsletters; (2) Whether petitioner Hutchinson is either a "public figure" or a "public official," thereby making applicable the "actual malice" standard of *New York Times v. Sullivan*, 376 U. S. 254 (1964); and (3) Whether respondents were entitled to summary judgment.

Ronald Hutchinson, a research behavioral scientist, sued respondents, William Proxmire, a United States Senator, and his legislative assistant, Morton Schwartz, for defamation arising out of Proxmire's giving what he called his "Golden Fleece" award. The "award" went to federal agencies that had sponsored Hutchinson's research. Hutchinson alleged that in making the award and publicizing it nationwide, respondents had libeled him, damaging him in his professional and academic standing, and had interfered with his contractual relations. The District Court granted summary judgment for respondents and the Court of Appeals affirmed.

CHANGES AS MARKED:

3,11,24

Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Brennan
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan

From: The White Justice

Circulated:

Reported to the JUN 21 1979

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-680

Ronald R. Hutchinson,
 Petitioner,
 v.
 William Proxmire and
 Morton Schwartz.

On Writ of Certiorari to the United
 States Court of Appeals for the
 Seventh Circuit.

[June —, 1979]

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

We granted certiorari, — U. S. — (1978), to resolve three issues: (1) Whether a Member of Congress is protected by the Speech or Debate Clause of the Constitution, Art. I, § 6, against suits for allegedly defamatory statements made by the Member in press releases and newsletters; (2) Whether petitioner Hutchinson is either a "public figure" or a "public official," thereby making applicable the "actual malice" standard of *New York Times v. Sullivan*, 376 U. S. 254 (1964); and (3) Whether respondents were entitled to summary judgment.

Ronald Hutchinson, a research behavioral scientist, sued respondents, William Proxmire, a United States Senator, and his legislative assistant, Morton Schwartz, for defamation arising out of Proxmire's giving what he called his "Golden Fleece" award. The "award" went to federal agencies that had sponsored Hutchinson's research. Hutchinson alleged that in making the award and publicizing it nationwide, respondents had libeled him, damaging him in his professional and academic standing, and had interfered with his contractual relations. The District Court granted summary judgment for respondents and the Court of Appeals affirmed.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-680

Ronald R. Hutchinson,
Petitioner,
v.
William Proxmire and
Morton Schwartz. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[June —, 1979]

MR. JUSTICE BRENNAN, dissenting.

I disagree with the Court's conclusion that Senator Proxmire's newsletters and press releases fall outside the protection of the speech or debate immunity. In my view public criticism by legislators of unnecessary governmental expenditures whatever its form is a legislative act shielded by the Speech or Debate Clause. I would affirm the judgment below for the reasons expressed in my dissent in *Gravel v. United States*, 408 U. S. 606, 648 (1972) (BRENNAN, J., dissenting).

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 30, 1979

Re: 78-680 - Hutchinson v. Proxmire

Dear Chief:

It is my view that the petitioner is not a public figure, and I hope that in this opinion we can hold that he is not. The only substantial affirmative problem I have with your circulated opinion concerns the last sentence of footnote 14 on page 16. This sentence seems implicitly to suggest that the defendants may enjoy a qualified privilege as a matter of federal law. I do not agree, and believe we would only be borrowing trouble in making such a suggestion. Accordingly, I hope that you will be willing to delete this sentence.

Sincerely yours,

P.S.
1/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1979

Re: No. 78-680, Hutchinson v. Proxmire

Dear Chief,

I regret my inadvertence in not responding earlier to your recirculation. Please add the following at the foot of your opinion for the Court:

Mr. Justice Stewart joins in all but footnote 10 of the Court's opinion. He cannot agree that the question whether a communication by a Congressman or a member of his staff with a federal agency is entitled to Speech or Debate Clause immunity depends upon whether the communication is defamatory. Because telephone calls to federal agency officials are a routine and essential part of the Congressional oversight function, he believes such activity is protected by the Speech or Debate Clause.

This brief statement reflects the views I voiced during our Conference discussion.

Sincerely yours,

P.S.
P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1979

Re: 78-680 - Hutchinson v. Proxmire & Schwartz

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 BYRON R. WHITE

June 7, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief,

I am still with you.

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 19, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief:

Please join me,

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief:

This is in response to your note of May 26, circulated today. At Conference I took the position that the petitioner was not a public figure.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief:

Please join me in your third draft circulation of

June 11.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1979

78-680 Hutchinson v. Proxmire

Dear Chief:

I am not entirely clear as to the scope of your "holding" in this case.

You conclude that the Speech or Debate Clause does not protect newsletters or press releases, and "reverse that part of the judgment of the Court of Appeals". But you "do not reach the other questions presented . . . [and] remand the case to the Court of Appeals for further proceedings".

The other two questions as identified in the opinion are (i) whether Hutchinson is a public figure, and (ii) whether respondents were entitled to summary judgment. There was, as I understood it, another question: what should we do about the final holding of the District Court that even if Hutchinson were a "private person . . . relevant state law dictates the grant of summary judgment". The Court of Appeals was silent on this state-law issue. My recollection is that a majority of the Conference thought we should vacate the judgment of CA7 in its entirety, and remand the case to it to consider first the state-law issue (which could be decisive), and thereafter - if reached - the "private person" issue under federal law.

My own view, expressed at Conference, was that in addition to deciding the Speech or Debate Clause issue, we should hold that Hutchinson is a private rather than a public person, and resolve that issue. Otherwise, on remand, CA7 may well reaffirm its decision that Hutchinson was a public figure, if it gets by the state law question. We then will probably be called upon to review the case again.

But my view did not prevail at Conference. I therefore am willing to join your opinion for the Court if the entire judgment of CA7 is vacated, and the remand is

2.

limited to the state-law issue. I possibly could join the judgment if the decision below is vacated, and the remand is limited first to the state-law issue and then to the "private person" question.

I think your treatment of the Speech or Debate Clause is excellent.

Sincerely,



The Chief Justice

P.S. On page 17, the sentence near the bottom to the effect that a Senator's speech may be available to the "public through the Congressional Record" may need to be clarified. This might be construed to allow a Senator to reproduce copies of the Congressional Record and mail them, with full protection of the Clause, to a 100,000 people as did Proxmire with his newsletter.

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1979

78-680 Hutchinson v. Proxmire

Dear Chief:

Thank you for your memos on the above case.

In response to your inquiry, I think we should reach and decide the "public figure" issue.

As I have indicated, it would not be unreasonable for CA7 to adhere to the view that Hutchinson is a public figure unless we decide the question. It has been argued and I think it was before us.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 7, 1979

78-680 Hutchinson v. Proxmire

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief:

Please join me in your presently circulating draft in this case. I would have no objection to reaching the "public figure" issue if it can be done without violating the traditional maxim that we avoid constitutional adjudication unless it is necessary. I am entirely satisfied with your reason for reaching the Speech or Debate Clause expressed in the present circulation, but think it might be a trickier job to reach the "public figure" issue in the case.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1979

Re: No. 78-680 - Hutchinson v. Proxmire

Dear Chief:

Please "join" or "re-join" me in your most recent circulation, whichever is appropriate.

Sincerely,



The Chief Justice

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 29, 1979

Re: 78-680 - Hutchinson v. Proxmire

Dear Chief:

Although I would also join an opinion holding that Hutchinson is not a public figure, as suggested by Lewis, I am prepared to join your opinion in its present form.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 7, 1979

Re: 78-680 - Hutchinson v. Proxmire

Dear Chief:

My join still holds.

Respectfully,



The Chief Justice
Copies to the Conference