

The Burger Court Opinion Writing Database

United States v. Gillock

445 U.S. 360 (1980)

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



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
MAR 8 1980
Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1455

United States, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
Edgar H. Gillock. | Sixth Circuit.

[February —, 1980]

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

We granted certiorari to resolve a conflict in the Circuits over whether the federal courts in a federal criminal prosecution should recognize a legislative privilege barring the introduction of evidence of the legislative acts of a state legislator charged with taking bribes or otherwise obtaining money unlawfully through exploitation of his official position.¹ 441 U. S. 942 (1979).

I

Respondent Edgar H. Gillock was indicted on August 12, 1976, in the Western District of Tennessee on five counts of obtaining money under color of official right in violation of 18 U. S. C. § 1951, one count of using an interstate facility to distribute a bribe in violation of 18 U. S. C. § 1952,² and one count of participating in an enterprise through a pattern of racketeering activity in violation of 18 U. S. C. § 1962. The indictment charged Gillock, then a Tennessee state senator and practicing attorney, with accepting money as a fee for

¹ Compare *United States v. DiCarlo*, 565 F. 2d 802 (CA1 1977), cert. denied, 435 U. S. 924 (1978), and *United States v. Craig*, 537 F. 2d 957 (CA7) (en banc), cert. denied, 429 U. S. 999 (1976), with *In re Grand Jury Proceedings*, 563 F. 2d 577 (CA3 1977).

² The count based on 18 U. S. C. § 1952 was subsequently dismissed by the District Court.

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

STYLISTIC CHANGES AS MARKED: 5, 7

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2nd DRAFT

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

CHAMBERS OF
THE CHIEF JUSTICE

March 25, 1980

MEMORANDUM TO THE CONFERENCE

RE: Cases held for No. 78-1455 - United States v. Gillock

One case has been held for Gillock: No. 78-1347 - Wall & McAvoy v. United States. DENY

Petitioners, Illinois state representatives, agreed for a "fee" to introduce legislation in the Illinois General Assembly to authorize the use of private employment agencies to place returning Vietnam veterans. The prosecution introduced evidence that petitioners had introduced such a bill in the state legislature; petitioners were convicted under the Hobbs Act. The CA7 rejected petitioners' contention that the introduction of evidence of their legislative acts was improper, relying on its en banc opinion in United States v. Craig, 537 F.2d 957 (1976).

The issue presented appears to be precisely that decided in Gillock. The two other issues presented, whether there was a sufficient nexus to interstate commerce to support the conviction and whether the Hobbs Act applies to cases of simple bribery, do not merit review.

I WILL VOTE TO DENY.

Regards,

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1980

RE: No. 78-1455 United States v. Gillock

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 10, 1980

Re: 78-1455 - United States v. Gillock

Dear Chief:

I am glad to join your opinion for the
Court.

Sincerely yours,

PS.
1/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 10, 1980

Re: 78-1455 - United States v. Gillock

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

March 10, 1980

Re: No. 78-1455 - United States v. Gillock

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

March 10, 1980

Re: No. 78-1455 - United States v. Gillock

Dear Chief:

Please join me.

Sincerely,



The Chief Justice
cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 10, 1980

Re: No. 78-1455 - United States v. Gillock

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

[note to the Chief Justice]

I have one personal suggestion. Would it not be advisable to recite that the Sixth Circuit panel was divided in its vote. I always like to give the dissenting judge below, when he has done a good job standing alone, a little boost. This could be worked in easily on page 5 of your opinion.

January 23, 1980

78-1455 U.S. v. Gillock

Dear Bill:

This will confirm my understanding that you will do whatever is necessary to register our dissent in the above case.

Unless the Court opinion contains doctrine that we think must be rebutted, I would be quite happy - as you suggest - to pay Chief Judge Edwards the accolade of adopting his dissent.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 13, 1980

78-1455 United States v. Gillock

Dear Chief:

Please add my name to that of Bill Rehnquist to the sentence saying we should affirm the judgment of the Court of Appeals.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 13, 1980

Re: No. 78-1455 United States v. Gillock

Dear Chief:

Would you add at the conclusion of your opinion the following:

"For the reasons stated by Chief Judge Edwards in his opinion in this case for the Court of Appeals for the Sixth Circuit, I would affirm the judgment of that court."

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1980

Re: 78-1455 - United States v. Gillock

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference