

# The Burger Court Opinion Writing Database

*City of Rome v. United States*  
446 U.S. 156 (1980)

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

January 10, 1980

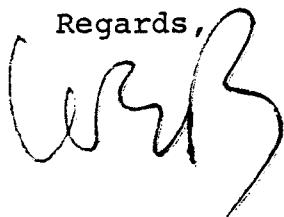
RE: 78-1840 - City of Rome v. United States

MEMORANDUM TO THE CONFERENCE:

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

December 4, 1979

RE: No. 78-1840 City of Rome v. United States

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 6, 1979

Re: No. 78-1840, City of Rome v. U.S.

Dear Thurgood,

I shall await Bill Rehnquist's dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 2, 1980

Re: No. 78-1840, City of Rome v. United States

Dear Bill,

Please add my name to your dissenting  
opinion.

Sincerely yours,

PS.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 5, 1979

Re: No. 78-1840 - City of Rome v. U. S.

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Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall  
Copies to the Conference  
cmc

4 856 1979

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
v. | States District Court for  
United States et al. | the District of Columbia.

[December — 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the constitutionality of the Voting Rights Act of 1965 and its applicability to electoral changes and annexations made by the city of Rome, Ga.

This is a declaratory judgment action brought by appellant city of Rome, a municipality in northwestern Georgia, under the Voting Rights Act of 1965, 42 U. S. C. § 1971 *et seq.* (1976). In 1970 the city had a population of 30,759, the racial composition of which was 76.6% white and 23.4% Negro. The voting-age population in 1970 was 79.4% white and 20.6% Negro.

The governmental structure of the city is established by a charter enacted in 1918 by the General Assembly of Georgia. Before the amendments at issue in this case, Rome's city charter provided for a nine-member city commission and a five-member board of education to be elected concurrently on an at-large basis by a plurality of the vote. The city was divided into nine wards, with one city commissioner from each ward to be chosen in the citywide election. There was no residency requirement for board of education candidates.

In 1966, the General Assembly of Georgia passed several laws of local application that extensively amended the elec-

— 2, 3, 13, 15, 19, 22,  
23, 25, 26, 29  
Footnotes renumbered

4 APR 1980

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, } On Appeal from the United  
v. } States District Court for  
United States et al. } the District of Columbia.

[April —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the constitutionality of the Voting Rights Act of 1965 and its applicability to electoral changes and annexations made by the city of Rome, Ga.

### I

This is a declaratory judgment action brought by appellant city of Rome, a municipality in northwestern Georgia, under the Voting Rights Act of 1965, 42 U. S. C. § 1971 *et seq.* (1976). In 1970 the city had a population of 30,759, the racial composition of which was 76.6% white and 23.4% Negro. The voting-age population in 1970 was 79.4% white and 20.6% Negro.

The governmental structure of the city is established by a charter enacted in 1918 by the General Assembly of Georgia. Before the amendments at issue in this case, Rome's city charter provided for a nine-member city commission and a five-member board of education to be elected concurrently on an at-large basis by a plurality of the vote. The city was divided into nine wards, with one city commissioner from each ward to be chosen in the citywide election. There was no residency requirement for board of education candidates.

In 1966, the General Assembly of Georgia passed several laws of local application that extensively amended the elec-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 23, 1980

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-1840, City of Rome v. United States

No. 79-54, City of Los Angeles v. Blake; City of Los Angeles v. United States. In City of Los Angeles v. Blake, a class action was brought by women alleging that the Los Angeles Police Department had engaged in employment discrimination on account of sex. The district court granted summary judgment for the defendants, but the Court of Appeals for the Ninth Circuit reversed and remanded for further proceedings. In City of Los Angeles v. United States, the United States sought to cut off Law Enforcement Assistance Administration funds to the Department because of alleged racial and sex discrimination. The district court enjoined the action pending resolution of the Blake case. The Court of Appeals vacated the injunction and remanded, determining that the Department had failed to show that it would be irreparably harmed without an injunction.

These cases were held for City of Rome because the Blake case presents the question whether Title VII's prohibition on state action having a discriminatory effect with respect to employment is a constitutional exercise of Congress' enforcement power under the Fourteenth Amendment. The Court of Appeals' conclusion that Congress may outlaw employment practices by municipalities that are discriminatory only in effect is wholly consistent with the interpretation City of Rome gives to congressional enforcement power under the

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 11, 1979

Re: No. 78-1840 - City of Rome v. United States

Dear Thurgood:

Enclosed for your review is a separate concurrence I am sending to the Printer. I am, however, joining your opinion.

My concern, I think, is self-evident. I do not expect you to do so, but if part IVB of your opinion were to reflect my approach, I would, of course, withdraw the concurrence.

Sincerely,



Mr. Justice Marshall

No. 78-1840 - City of Rome v. United States

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion but write separately to state my understanding of the effect of the holding in Part IVB. The Court there affirms, as not clearly erroneous, the District Court's determination that the city of Rome failed to meet its burden of disproving that the 13 disputed annexations had a discriminatory effect. That issue, for me, is close, but I accept the District Court's ruling. The holding, however, does seem to have the anomalous result of leaving the voters

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

From: Mr. Justice Blackmun

Circulated: 12 DEC 1979

**1st DRAFT**

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

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
 v. | States District Court for  
 United States et al. | the District of Columbia.

[January —, 1980]

**MR. JUSTICE BLACKMUN, concurring.**

I join the Court's opinion but write separately to state my understanding of the effect of the holding in Part IVB. The Court there affirms, as not clearly erroneous, the District Court's determination that the city of Rome failed to meet its burden of disproving that the 13 disputed annexations had a discriminatory effect. That issue, for me, is close, but I accept the District Court's ruling. The holding, however, does seem to have the anomalous result of leaving the voters residing in those annexed areas within the jurisdiction of Rome's board of education, but outside the jurisdiction of its city commission.\* As the appellees point out, however, Brief for Appellees 40-42, affirmance of the District Court's holding does not preclude the city from altering this anomaly.

It seems significant to me that the District Court adopted the remedial device of conditioning its approval of the annexations on Rome's abandonment of the residency requirement for city commission elections. It thus denied the city's motion for approval of the annexations "without prejudice to renewal . . . upon the undertaking of suitable action consistent with the views expressed herein." *City of Rome v.*

\*The Attorney General, in response to the city's motion for reconsideration of its submissions, agreed to preclear the 13 annexations for purposes of board of education elections. That decision was based solely on the fact that there was no residency requirement for board of education elections under Rome's pre-1966 electoral rules. See *ante*, at —, — (slip op., at 1, 3-4).

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 4, 1979

78-1840-City of Rome v. U.S.

Dear Thurgood:

I will circulate promptly a dissent in this case.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

12

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Bahnquist  
 Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: DEC 5 1979

1st DRAFT

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

12-5-79

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
 v. | States District Court for  
 United States et al. | the District of Columbia.

[December —, 1979]

MR. JUSTICE POWELL, dissenting.

Eighteen months ago this Court held that the term "State" in § 4 (a) of the Voting Rights Act includes all political subdivisions that control election processes, and that those subdivisions are subject to the requirement in § 5 of the Act that federal authorities preclear changes in voting procedures. *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U. S. 110 (1978) (*Sheffield*). Today the Court concludes that those subdivisions are not within the term "State" when it comes to an action to "bail out" from the preclearance requirement. Because this decision not only conflicts with *Sheffield* but also raises grave questions as to the constitutionality of the Act, I dissent.

### I

Although I dissent on statutory and constitutional grounds, the need to examine closely the Court's treatment of the Voting Rights Act is sharply illustrated by the facts of this case. In Rome, a city of about 30,000, approximately 15% of the registered voters are black. This case involves two types of local action affecting voting. First, in 1966 the Georgia Assembly established a majority vote requirement for the City Commission and the Board of Education, and reduced the number of election wards from nine to three. Under the new arrangement, three city commissioners and two members of the Board of Education are chosen from each ward for num-

1-7-80

3/78

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 78-1840

Recirculated: JAN 7 1979

City of Rome et al., Appellants, | On Appeal from the United  
v. | States District Court for  
United States et al. | the District of Columbia.

[December —, 1979]

MR. JUSTICE POWELL, dissenting.

Eighteen months ago this Court held that the term "State" in § 4 (a) of the Voting Rights Act includes all political subdivisions that control election processes, and that those subdivisions are subject to the requirement in § 5 of the Act that federal authorities preclear changes in voting procedures. *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U. S. 110 (1978) (*Sheffield*). Today the Court concludes that those subdivisions are not within the term "State" when it comes to an action to "bail out" from the preclearance requirement. Because this decision not only conflicts with *Sheffield* but also raises grave questions as to the constitutionality of the Act, I dissent.

I

Although I dissent on statutory and constitutional grounds, the need to examine closely the Court's treatment of the Voting Rights Act is sharply illustrated by the facts of this case. In Rome, a city of about 30,000, approximately 15% of the registered voters are black. This case involves two types of local action affecting voting. First, in 1966 the Georgia Assembly established a majority vote requirement for the City Commission and the Board of Education, and reduced the number of election wards from nine to three. Under the new arrangement, three city commissioners and two members of the Board of Education are chosen from each ward for num-

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Bahnquist  
Mr. Justice Stevens

1,3,4,5,7,12

From: Mr. Justice Powell

4-8-80

Circulated: \_\_\_\_\_  
3rd DRAFT  
Recirculated: APR 9 1980

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
v. | States District Court for  
United States et al. | the District of Columbia.

[December —, 1979]

MR. JUSTICE POWELL, dissenting.

Two years ago this Court held that the term "State" in § 4 (a) of the Voting Rights Act includes all political subdivisions that control election processes, and that those subdivisions are subject to the requirement in § 5 of the Act that federal authorities preclear changes in voting procedures. *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U. S. 110 (1978) (*Sheffield*). Today the Court concludes that those subdivisions are not within the term "State" when it comes to an action to "bail out" from the preclearance requirement. Because this decision not only conflicts with *Sheffield* but also raises grave questions as to the constitutionality of the Act, I dissent.

### I

Although I dissent on statutory and constitutional grounds, the need to examine closely the Court's treatment of the Voting Rights Act is sharply illustrated by the facts of this case. In Rome, a city of about 30,000, approximately 15% of the registered voters are black. This case involves two types of local action affecting voting. First, in 1966 the Georgia Assembly established a majority vote requirement for the City Commission and the Board of Education, and reduced the number of election wards from nine to three. Under the new arrangement, three city commissioners and two members of the Board of Education are chosen from each ward for num-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 3, 1979

Re: No. 78-1840 - City of Rome v. United States

Dear Thurgood:

In due course, I will circulate a dissent.

Sincerely,



Mr. Justice Marshall

Copies to the Court

89 27/11/4-15

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

From: Mr. Justice Rehnquist

Circulated: 17 DEC 1979

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
 v. | States District Court for  
 United States et al. | the District of Columbia.

[January —, 1980]

MR. JUSTICE REHNQUIST, dissenting.

We have only this Term held that the city of Mobile does not violate the Constitution by maintaining an at-large system of electing city officials. *City of Mobile v. Bolden*, — U. S. — (19—). This result is reached even though the black residents of Mobile have demonstrated that racial “bloc” voting has prevented them from electing a black representative to the city government. The Court correctly concluded that a city has no obligation under the Constitution to structure its representative system in a manner that maximizes the black community’s ability to elect a black representative. Yet in the instant case, the city of Rome is prevented from instituting precisely the type of structural changes which the Court says Mobile may maintain consistently with the Civil War Amendments because Congress has prohibited these changes under the Voting Rights Act as an exercise of its “enforcement” power conferred by those Amendments.

It is not necessary to hold that Congress is limited to merely providing a forum in which aggrieved plaintiffs may assert rights under the Civil War Amendments in order to disagree with the Court’s decision permitting Congress to strait-jacket the city of Rome in this manner. Under § 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment, Congress is granted only the power to “enforce” by “appropriate” legislation the limitations on state action

1, 4-6, 8-9, 11, 13-15  
footnotes renumbered

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

From: Mr. Justice Rehnquist

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

2nd DRAFT

Recirculated: 7 APR 1980

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
v. | States District Court for  
United States et al. | the District of Columbia.

[January —, 1980]

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

We have only this Term held that the city of Mobile does not violate the Constitution by maintaining an at-large system of electing city officials unless voters can prove that system is a product of purposeful discrimination. *City of Mobile* (80) *v. Bolden*, — U. S. — (1980). This result is reached even though the black residents of Mobile have demonstrated that racial "bloc" voting has prevented them from electing a black representative to the city government. The Court correctly concluded that a city has no obligation under the Constitution to structure its representative system in a manner that maximizes the black community's ability to elect a black representative. Yet in the instant case, the city of Rome is prevented from instituting precisely the type of structural changes which the Court says Mobile may maintain consistently with the Civil War Amendments, so long as their purpose be legitimate, because Congress has prohibited these changes under the Voting Rights Act as an exercise of its "enforcement" power conferred by those Amendments.

It is not necessary to hold that Congress is limited to merely providing a forum in which aggrieved plaintiffs may assert rights under the Civil War Amendments in order to disagree with the Court's decision permitting Congress to strait-jacket the city of Rome in this manner. Under § 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment, Congress is granted only the power to "enforce" by "appropriate" legislation the limitations on state action

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: DEC 11 79

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
 v. | States District Court for  
 United States et al. | the District of Columbia.

[January —, 1980]

MR. JUSTICE STEVENS, concurring.

In *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U. S. 110, the Court construed the word "State" as used in §§ 4 (a) and 5 of the Voting Rights Act of 1965 to include all political units within a State even though they did not satisfy the statutory definition of a "political subdivision,"<sup>1</sup> and even though that definition had been added to the statute for the express purpose of limiting its coverage.<sup>2</sup> My opinion that the *Sheffield* Court's construction of the Act was erroneous does not qualify the legal consequences of that holding. See *Dougherty County Board of Education v. White*, 439 U. S. 32, 47 (STEVENS, J., concurring).<sup>3</sup> Nor does

<sup>1</sup> Section 14 (c)(2) of the Act provides:

"The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

<sup>2</sup> See *United States v. Sheffield Board of Commissioners*, 435 U. S. 110, 142-143 (STEVENS, J., dissenting).

<sup>3</sup> In any event, the city of Rome may be subject to § 5 even under the reasoning of the dissent in *Sheffield*. Under that reasoning, there are three types of entities subject to § 5: covered States, their political subdivisions (i. e., counties and other subdivisions that register voters), and political subdivisions of noncovered States that have been separately designated as covered by the Attorney General pursuant to § 4 (b) of the Act. In this case the city of Rome registered voters from 1964 to 1969, when the responsibility was transferred to Floyd County, see Stipulation No. 5, App., at 58. Thus, from 1965 to 1969, the city was clearly covered by the Act. Because it did not preclear the transfer of voting regis-

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

PP. 14  
 From: Mr. Justice Stevens

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

2nd DRAFT

Recirculated: JAN 11 '80

## SUPREME COURT OF THE UNITED STATES

No. 78-1840

City of Rome et al., Appellants, | On Appeal from the United  
 v. | States District Court for  
 United States et al. | the District of Columbia.

[January —, 1980]

MR. JUSTICE STEVENS, concurring.

Although I join the Court's opinion, the dissenting opinions prompt me to emphasize two points that are crucial to my analysis of the case; both concern the statewide nature of the remedy Congress authorized when it enacted the Voting Rights Act of 1965. The critical questions are: (1) whether, as a statutory matter, Congress has prescribed a statewide remedy that denies local political units within a covered State the right to "bail out" separately; and (2) if so, whether, as a constitutional matter, such statewide relief exceeds the enforcement powers of Congress. If, as I believe, Congress could properly impose a statewide remedy and in fact did so in the Voting Rights Act, then the fact that the city of Rome has been innocent of any wrongdoing for the last 17 years is irrelevant; indeed, we may assume that there has never been any racial discrimination practiced in the city of Rome. If racially discriminatory voting practices elsewhere in the State of Georgia were sufficiently pervasive to justify the statewide remedy Congress prescribed, that remedy may be applied to each and every political unit within the State, including the city of Rome.

### I

Section 5 of the Voting Rights Act imposes certain restrictions on covered States and their political subdivisions as well as on political subdivisions in noncovered States that have been separately designated as covered by the Attorney General pursuant to § 4 (b) of the Act. Section 4 (a) of the Act