

# The Burger Court Opinion Writing Database

*Supreme Court of Virginia v. Consumers Union of United States, Inc.*

446 U.S. 719 (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

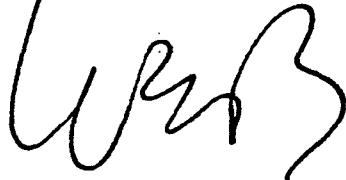
May 27, 1980

RE: 79-198 - Supreme Court of Virginia  
v. Consumers Union of the U.S., Inc.

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 8, 1980

RE: No. 79-198 Supreme Court of Virginia v. Consumers  
Union of U.S.

Dear Byron:

I can join your Memorandum if it's converted into  
an opinion.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 21, 1980

RE: No. 79-198 Supreme Court of Virginia v. Consumers  
Union of the United States

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Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

May 27, 1980

RE: No. 79-198 Supreme Court of Virginia v. Consumers  
Union of the United States, Inc.

Dear Byron:

I agree with your memorandum of May 23 regarding the  
disposition of No. 79-185.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 27, 1980

Re: No. 79-198, Supreme Court of Virginia  
v. Consumers Union

Dear Byron,

I continue to question seriously whether the issues resolved by your opinion for the Court were properly or timely raised in this litigation. Since, however, I agree completely with your thoughtful and thorough discussion and resolution of these issues, I have decided to join your opinion unless someone else writes a dissent on the point that continues to trouble me.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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: 30 APR 1980

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 79-198

Supreme Court of Virginia et al., Appellants, v. Consumers Union of the United States et al.	On Appeal from the United States District Court for the Eastern District of Virginia.
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[May —, 1980]

### Memorandum of MR. JUSTICE WHITE.

The variety of views expressed at the Conference in this case led to a four-four vote and the assignment to me for memorandum treatment. The following submission is an exploratory memorandum and not a proposed opinion.

The case raises questions of official immunity of the Virginia Supreme Court (V. S. C.) from suit under 42 U. S. C. § 1983 and the propriety of awarding attorney's fees under the Civil Rights Attorney's Fees Awards Act (Act), 42 U. S. C. § 1988 (1979 Supp.), against the V. S. C. and its chief justice in his official capacity.

### I

A few words at the outset about the role of the V. S. C. in regulating and disciplining attorneys are appropriate. The V. S. C. has firmly held to the view that it has inherent authority to regulate and discipline attorneys. *Button v. Day*, 204 Va. 547, 552-553, 554, 555 (1963). It also has statutory authority to do so. Section 54-58 of the Code of Virginia (1950) authorizes the V. S. C. to "promulgate and amend rules and regulations—prescribing a code of ethics governing the professional conduct of attorneys' at-law—."<sup>1</sup>

<sup>1</sup> "§ 54-48. Rules and regulations defining practice of law and prescrib-

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 12-15

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: 6 MAY 1980

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

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 79-198**

Supreme Court of Virginia et al., Appellants, v. Consumers Union of the United States et al.	On Appeal from the United States District Court for the Eastern District of Virginia.
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[May —, 1980]

**Memorandum of MR. JUSTICE WHITE.**

The variety of views expressed at the Conference in this case led to a four-four vote and the assignment to me for memorandum treatment. The following submission is an exploratory memorandum and not a proposed opinion.

The case raises questions of official immunity of the Virginia Supreme Court (V. S. C.) from suit under 42 U. S. C. § 1983 and the propriety of awarding attorney's fees under the Civil Rights Attorney's Fees Awards Act (Act), 42 U. S. C. § 1988 (1979 Supp.), against the V. S. C. and its chief justice in his official capacity.

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<sup>1</sup> "§ 54-48. Rules and regulations defining practice of law and prescrib-

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 21, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-198 - Supreme Court of Virginia  
v. Consumers Union of the  
United States

Producing a suggested opinion has involved some rewriting of the circulated memorandum and some other changes, but no change in substance is intended and hopefully none unintentionally effected.



B. R. W.

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: 21 MAY 1980

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 79-198**

Supreme Court of Virginia et al.,  
 Appellants,  
 v.  
 Consumers Union of the United  
 States et al. | On Appeal from the United  
 States District Court for  
 the Eastern District of  
 Virginia.

[May —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case raises questions of whether the Supreme Court of Virginia (Virginia Court) and its Chief Justice are officially immune from suit in an action brought under 42 U. S. C. § 1983 challenging the Virginia Court's disciplinary rules governing the conduct of attorneys and whether attorney's fees were properly awarded under the Civil Rights Attorney's Fees Awards Act (Act), 42 U. S. C. § 1988 (1979 Supp.), against the Virginia Court and its Chief Justice in his official capacity.

**I**

It will prove helpful at the outset to describe the role of the Virginia Court in regulating and disciplining attorneys. The Virginia Court has firmly held to the view that it has inherent authority to regulate and discipline attorneys. *Button v. Day*, 204 Va. 547, 552-553, 554, 555 (1963). It also has statutory authority to do so. Section 54-48 of the Code of Virginia (1950) authorizes the Virginia Court to "promulgate and amend rules and regulations . . . [p]rescribing a code of ethics governing the professional conduct of attorneys-at-law. . . ." <sup>1</sup>

<sup>1</sup> "§ 54-48. Rules and regulations defining practice of law and prescribing procedure for practice by law students, codes of ethics and disciplinary

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 23, 1980

Re: No. 79-198 - Supreme Court of Virginia v.  
Consumers Union of the United States, Inc.

Dear Harry,

As indicated in note 15 in the Memorandum initially circulated, I would recommend that the Conference vacate the judgment in No. 79-185, the cross-appeal being held, and remand it for further consideration in light of the opinion in No. 79-198. This would involve accepting the submission that we have jurisdiction over the cross-appeal although it would be unappealable standing alone.

Sincerely yours,



Mr. Justice Blackmun  
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 Rhnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 27 MAY 1980

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

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES: 18

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-198

Supreme Court of Virginia et al., Appellants, v. Consumers Union of the United States et al.	On Appeal from the United States District Court for the Eastern District of Virginia.
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[May —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case raises questions of whether the Supreme Court of Virginia (Virginia Court) and its Chief Justice are officially immune from suit in an action brought under 42 U. S. C. § 1983 challenging the Virginia Court's disciplinary rules governing the conduct of attorneys and whether attorney's fees were properly awarded under the Civil Rights Attorney's Fees Awards Act (Act), 42 U. S. C. § 1988 (1979 Supp.), against the Virginia Court and its Chief Justice in his official capacity.

¶

It will prove helpful at the outset to describe the role of the Virginia Court in regulating and disciplining attorneys. The Virginia Court has firmly held to the view that it has inherent authority to regulate and discipline attorneys. *Button v. Day*, 204 Va. 547, 552-553, 554, 555 (1963). It also has statutory authority to do so. Section 54-48 of the Code of Virginia (1950) authorizes the Virginia Court to "promulgate and amend rules and regulations . . . [p]rescribing a code of ethics governing the professional conduct of attorneys-at-law. . . ."<sup>1</sup>

<sup>1</sup> "§ 54-48. Rules and regulations defining practice of law and prescribing procedure for practice by law students, codes of ethics and disciplinary

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case held for 79-198 - Supreme Court  
of Virginia v. Consumers Union of  
the United States, Inc.

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79-185 - Consumers Union of United States,  
Inc. v. Virginia State Bar.

This case was held for 79-198. As  
indicated previously, I would vacate and  
remand this case for reconsideration in  
light of 79-198.



B. R. W.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 12, 1980

Re: No. 79-198 - Supreme Court of Virginia, et al.  
v. Consumers Union of the United States, et al.

Dear Byron:

As of now - I am with you.

Sincerely,

*JM*  
T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 21, 1980

Re: No. 79-198 - Supreme Court of Virginia, et al.  
v. Consumers Union of the United  
States, et al.

Dear Byron:

Please join me.

Sincerely,

*JM*

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 23, 1980

Re: No. 79-198 - Supreme Court of Virginia  
v. Consumers Union

Dear Byron:

I go along, and you may join me. I shall be interested in your recommendation with respect to the "held" case, No. 79-185, Consumers Union v. Virginia State Bar.

Sincerely,

*Harry*

Mr. Justice White

cc: The Conference

April 30, 1980

79-198 Supreme Court of Virginia v. Consumers Union

Dear Byron:

Please show on the next draft of your memorandum that I took no part in the consideration or decision of this case.

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 1, 1980

Re: No. 79-198 - Supreme Court of Virginia v.  
Consumers Union of the United States

Dear Byron:

Although I do not claim to have fully digested your memorandum of April 30th in this case, I have read it and find myself in substantial agreement with it. As of now, should it become an opinion of the Court, I would join it.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 21, 1980

Re: No. 79-198 Supreme Court of Virginia v. Consumers  
Union of the United States

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

May 6, 1980

Re: 79-198 - Supreme Court of Virginia v.  
Consumers Union of the United States

Dear Byron:

Subject to possible reconsideration in the  
light of what others may write, I find myself at  
the moment persuaded by your memorandum.

Respectfully,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1980

Re: 79-198 - Supreme Court of Virginia  
v. Consumers Union of the United States

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference