

# The Burger Court Opinion Writing Database

## *Democratic Party of United States v. Wisconsin ex rel. La Follette*

450 U.S. 107 (1981)

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

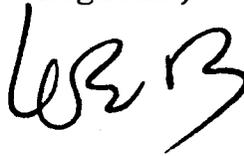
January 8, 1981

Re: 79-1631 - Democratic Party of the United States v.  
La Follette

Dear Potter:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRS', written over the typed name 'Justice Stewart'.

Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 6, 1981

RE: No. 79-1631 Democratic Party of U.S. v. La Follette

Dear Potter:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billings".

Mr. Justice Stewart

cc: The Conference

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-1631

Democratic Party of the United States of America et al.,  
Appellants,  
v.  
Bronson C. La Follette et al.

On Appeal from the Supreme Court of Wisconsin.

??

[January —, 1981]

JUSTICE STEWART delivered the opinion of the Court.  
The charter of the appellant Democratic Party of the United States (the National Party) provides that delegates to its National Convention shall be chosen through procedures in which only Democrats can participate. Consistently with the charter, the National Party's Delegate Selection Rules provide that only those who are willing to affiliate publicly with the Democratic Party may participate in the process of selecting delegates to the Party's National Convention. The question on this appeal is whether Wisconsin may successfully insist that its delegates to the Convention be seated, even though those delegates are chosen through a process that includes a state preference primary election in which voters do not declare their party affiliation. The Wisconsin Supreme Court held that the National Convention is bound by the Wisconsin primary election results, and cannot refuse to seat the delegates chosen in accord with Wisconsin law. 93 Wis. 2d 473, 287 N. W. 2d 519,

**I**

Rule 2A of the Democratic Selection Rules for the 1980 National Convention states: "Participation in the delegate selection process in primaries or caucuses shall be restricted to

11/15/16

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

From: Mr. Justice Stewart

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

No. 79-1631

Democratic Party of the United  
States of America et al.,  
Appellants,  
v.  
Bronson C. La Follette et al.

On Appeal from the Su-  
preme Court of Wisconsin.

[January —, 1981]

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 5, 1981

Re: 79-1631 - Democratic Party of  
the United States v. La Follette

Dear Potter,

Please join me.

Sincerely yours,



Mr. Justice Stewart

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 6, 1981

Re: No. 79-1631 - Democratic Party of the United  
States of America et al., v. La Follette et al.

Dear Potter:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Stewart

cc: The Conference

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

*File*

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 15, 1980

Re: No. 79-1631 - Democratic Party v. LaFollette

Dear Lewis:

You and Bill Rehnquist and I are on the down side of this case. I very much appreciate your being willing to undertake the dissent. I have spoken to Bill Rehnquist about this. Despite his having done some writing last June, he is willing to have you lead the dissent.

Sincerely,

*Harry*

Mr. Justice Powell

cc: Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 7, 1981

Re: No. 79-1631 - Democratic Party v. LaFollette

Dear Potter:

I shall wait for the dissent.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 12, 1981

Re: No. 79-1631 - Democratic Party v. LaFollette

Dear Lewis:

Your dissent is, for me, persuasive. Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 6, 1981

79-1631 Democratic Party v. La Follette

Dear Potter:

In due time, I will try my hand at a dissent.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

2-12-81

From Mr. Justice Powell

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1st DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 79-1631

Democratic Party of the United States of America et al., Appellants, v. Bronson C. La Follette et al.	}	On Appeal from the Su- preme Court of Wisconsin.
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[February —, 1981]

JUSTICE POWELL, dissenting.

Under Wisconsin law, the Wisconsin delegations to the Presidential nominating conventions of the two major political parties are required to cast their votes in a way that reflects the outcome of the State's "open" primary election. That election is conducted without advance party registration or any public declaration of party affiliation, thus allowing any registered voter to participate in the process by which the Presidential preferences of the Wisconsin delegation to the Democratic National Convention are determined. The question in this case is whether, in light of the National Party's rule that only publicly declared Democrats may have a voice in the nomination process, Wisconsin's open primary law infringes the National Party's First Amendment rights of association. Because I believe that this law does not impose a substantial burden on the associational freedom of the National Party, and actually promotes the free political activity of the citizens of Wisconsin, I dissent.

I

The Wisconsin open primary law was enacted in 1903. 1903 Wis. Laws, ch. 451. It was amended two years later to apply to Presidential nominations. 1905 Wis. Laws, ch. 369. See *State ex rel. La Follette v. Democratic Party*, 93 Wis. 2d

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 18, 1981

Re: No. 79-1631 Democratic Party v. La Follette

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,  


Justice Powell

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

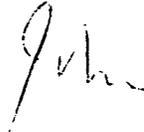
January 5, 1981

Re: 79-1631 - Democratic Party of the  
United States v. La Follette

Dear Potter:

Please join me.

Respectfully,



Justice Stewart

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