

# The Burger Court Opinion Writing Database

*McDaniel v. Sanchez*

452 U.S. 130 (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

May 27, 1981

RE: 80-180 - McDaniel v. Sanchez

Dear John:

I join. I will not restate my view that the carving out of a few states was in itself unconstitutional. The Court has resolved that issue.

Regards,

A handwritten signature in black ink, appearing to be 'J. Stevens', written over the typed word 'Regards,'.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1981

RE: No. 80-180 McDaniel v. Sanchez

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 21, 1981

Re: 80-180 - McDaniel v. Sanchez

Dear John:

In due course I shall circulate a  
brief dissent in this case.

Sincerely yours,

P.S.  
/

Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 26 MAY 1981

1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 80-180

W. C. McDaniel et al., Petitioners, v. Jose Sanchez et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	--

[June — , 1981]

JUSTICE STEWART, dissenting.

In *East Carroll Parish School Bd. v. Marshall*, 424 U. S. 636, 638-639, n. 6, the Court expressly stated that a reapportionment scheme which is submitted and adopted pursuant to a court order does not have to be approved through the preclearance procedures of § 5 of the Voting Rights Act. This statement represented the deliberate and considered view of the Court, as demonstrated by the presence of a separate opinion in the case questioning the Court's resolution of the issue. See *id.*, at 640 (concurring opinion). Because I believe that what the Court said in the *East Carroll* case expressly controls the result in this case, I respectfully dissent.

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

From: Mr. Justice Stewart

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

Recirculated: 26 MAY 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-180

W. C. McDaniel et al., Petitioners, v. Jose Sanchez et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	--

[June — , 1981]

JUSTICE STEWART, with whom JUSTICE REHNQUIST joins, dissenting.

In *East Carroll Parish School Bd. v. Marshall*, 424 U. S. 636, 638-639, n. 6, the Court expressly stated that a reapportionment scheme which is submitted and adopted pursuant to a court order does not have to be approved through the preclearance procedures of § 5 of the Voting Rights Act. This statement represented the deliberate and considered view of the Court, as demonstrated by the presence of a separate opinion in the case questioning the Court's resolution of the issue. See *id.*, at 640 (concurring opinion). Because I believe that what the Court said in the *East Carroll* case expressly controls the result in this case, I respectfully dissent.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 21, 1981

Re: 80-180 - McDaniel v. Sanchez

Dear John,

Please join me.

Sincerely yours,

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

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 22, 1981

Re: No. 80-180 - McDaniel v. Sanchez

Dear John:

Please join me.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 26, 1981

Re: No. 80-180 - McDaniel v. Sanchez

Dear John:

Please join me.

Sincerely,

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

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 27, 1981

80-180 McDaniel v. Sanchez

Dear John:

Please join me.

I may write a paragraph in concurrence.

Sincerely,

*Lewis*

Mr. Justice Stevens

lfp/s

cc: The Conference

1fp/ss 5/28/81

80-180 McDaniel v. Sanchez

JUSTICE POWELL, concurring.

The decision today is foreshadowed by Wise v. Lipscomb, 437 U.S. 535 (1978), and I join the Court's opinion. The constitutionality of §5 of the Voting Rights Act of 1965 has been sustained by prior cases. If the question were presented for reconsideration, I would adhere to the contrary view as previously expressed. City of Rome v. United States, 446 U.S. 156, 193 (1980) (Powell, J., dissenting); Dougherty County Bd. of Ed. v. White, 439 U.S. 32, 48 (1978) (Powell, J., dissenting); Georgia v. United States, 411 U.S. 526, 545 (1973) (Powell, J., dissenting). See also United States v. Board of Commissioners of Sheffield, 435 U.S. 110, 141 (1978) (Stevens, J., dissenting); Allen v. State Board of Elections, 393 U.S. 544, 586 and n. 4 (1969) (Harlan, J., concurring and

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

From: Mr. Justice Powell

5-28-81

Circulated: **MAY 28 1981**

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 80-180

W. C. McDaniel et al., Petitioners, v. Jose Sanchez et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	--

[June —, 1981]

JUSTICE POWELL, concurring.

The decision today is foreshadowed by *Wise v. Lipscomb*, 437 U. S. 535 (1978), and I join the Court's opinion. The constitutionality of § 5 of the Voting Rights Act of 1965 has been sustained by prior cases. If the question were presented for reconsideration, I would adhere to the contrary view as previously expressed. *City of Rome v. United States*, 446 U. S. 156, 193 (1980) (POWELL, J., dissenting); *Dougherty County Bd. of Ed. v. White*, 439 U. S. 32, 48 (1978) (POWELL, J., dissenting); *Georgia v. United States*, 411 U. S. 526, 545 (1973) (POWELL, J., dissenting). See also *United States v. Board of Commissioners of Sheffield*, 434 U. S. 110, 141 (1978) (STEVENS, J., dissenting); *Allen v. State Board of Elections*, 393 U. S. 544, 586, and n. 4 (1969) (Harlan, J., concurring and dissenting); *South Carolina v. Katzenbach*, 383 U. S. 301, 358 (1966) (Black, J., concurring and dissenting).\*

\*In his dissent, Justice Black stated that his "objection to § 5 is that [it] . . . conflict[s] with the most basic principles of the Constitution." 383 U. S., at 358. Justice Black added:

"Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

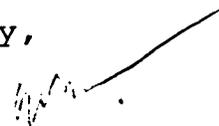
May 26, 1981

Re: No. 80-180 McDaniel v. Sanchez

Dear Potter:

Please join me in your dissenting opinion.

Sincerely,



Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

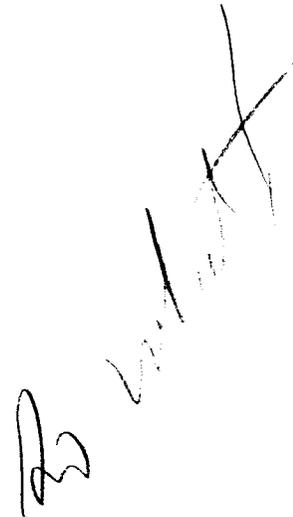
May 19, 1981

MEMORANDUM TO THE CONFERENCE

Re: 80-180 - McDaniel v. Sanchez

You might be interested in knowing that the attached opinion was delivered to the Computer Unit after 10:30 a.m. this morning and returned to us about 2:45 p.m. in this form.

Respectfully,



0\$01801 5/19 spw

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: MAY 19 '81

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-180

W. C. McDANIEL, ET AL., PETITIONERS, *v.*  
 JOSE SANCHEZ, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FIFTH CIRCUIT

[May —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide whether the preclearance requirement of § 5 of the Voting Rights Act of 1965, as amended,<sup>1</sup> applies to a reapportionment plan submitted to a

<sup>1</sup>The Voting Rights Act was enacted in 1965, 79 Stat. 437, and was amended in 1970, 84 Stat. 314, and in 1975, 89 Stat. 400. In relevant part, § 5 now provides:

"[W]henver a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the third sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f) (2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not inter-

Mr. Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

PP. 19-21

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-180

W. C. McDaniel et al.,  
Petitioners,  
v.  
Jose Sanchez et al. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Fifth Circuit.

[June — , 1981]

JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide whether the preclearance requirement of § 5 of the Voting Rights Act of 1965, as amended,<sup>1</sup> applies to a reapportionment plan submitted to a

<sup>1</sup>The Voting Rights Act was enacted in 1965, 79 Stat. 437, and was amended in 1970, 84 Stat. 314, and in 1975, 89 Stat. 400. In relevant part, § 5 now provides:

"[W]henver a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the third sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not

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 19-20

From: Mr. Justice Stevens

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

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

MAY 28 '81

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-180

W. C. McDaniel et al., Petitioners, v. Jose Sanchez et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---	--

[June — , 1981]

JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide whether the preclearance requirement of § 5 of the Voting Rights Act of 1965, as amended,<sup>1</sup> applies to a reapportionment plan submitted to a

<sup>1</sup>The Voting Rights Act was enacted in 1965, 79 Stat. 437, and was amended in 1970, 84 Stat. 314, and in 1975, 89 Stat. 400. In relevant part, § 5 now provides:

"[W]henever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title based upon determinations made under the third sentence of section 1973b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not