

The Burger Court Opinion Writing Database

Hathorn v. Lovorn

457 U.S. 255 (1982)

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

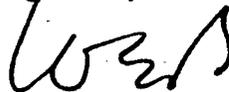
JUN 11 11 00 AM '82
June 10, 1982

Re: 81-451 - Hathorn v. Lovorn

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 1, 1982

RE: No. 81-451 Hathorn v. Lovorn

Dear Sandra:

I join John's comments. I do hope you'll adopt his suggested changes. As a possible alternative I could go along with an omission of everything beginning, "Because we cannot review" at the end of the first full paragraph on page 6 through the end of the carry-over paragraph "determined in the first appeal" at page 7. This would include dropping footnote 10. With these changes I could join.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1982

RE: No. 81-451 Hathorn v. Lovorn

Dear Sandra:

Please join me in your circulation of June 3.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1982

81-451 - Hathorn v. Lovorn

Dear Sandra,

I agree.

Sincerely yours,

Byron

Justice O'Connor

Copies to the Conference

cpm

85 MAY 31 1982

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: No. 81-451 - Hathorn v. Lovorn

Dear Sandra:

Please join me.

Sincerely,

T.M.
T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 8, 1982

Re: No. 81-451 - Hathorn v. Lovorn

Dear Sandra:

Please join me in your recirculation.

Sincerely,



Justice O'Connor

cc: The Conference

May 31, 1982

81-451 Hathorn v. Lovorn

Dear Bill:

You and I were alone in this case. There were six votes to reverse, and the Chief said he would "join any four votes". We voted to DIG, with your alternate vote to affirm. I had no firm alternate vote.

I have read Sandra's opinion. My disposition is simply to join in the judgment. The case is a "sport" that should never have been granted. I see no purpose, however, in dissenting - especially at this season of the year.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1982

81-451 Hathorn v. Lovorn

Dear Sandra:

I would appreciate your simply adding at the end
of your opinion that I join the judgment.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 3 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-451

**RALPH HATHORN, ET AL., PETITIONERS v.
MRS. BOBBY LOVORN ET AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSISSIPPI**

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

The provisions of §§ 5, 12(f), and 14(b) of the Voting Rights Act, referred to in the opinion of the Court, *ante*, at 11-12, convince me that Congress did not intend the state courts to play a role in the enforcement of that Act. In *Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U. S. 473 (1981), upon which the Court heavily relies for its contrary conclusion, we said:

“The factors generally recommending exclusive federal-court jurisdiction over an area of federal law include the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims.” *Id.*, at 483-484 (footnotes omitted).

It seems to me that each of these factors counsels in favor of exclusive federal-court jurisdiction, and I do not understand the Court to contend otherwise.

From a practical point of view, I think the Court's decision is bound to breed conflicts between the state courts and the federal District Courts sitting within the states, each of which may now determine whether or not a particular voting change must be pre-cleared with the Attorney General before being enforced in a covered jurisdiction. Indeed, the precursor of such conflict may well be found in the Court's conclud-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

1982 JUN 1 11 58

June 1, 1982

Re: 81-451 - Hathorn v. Lovorn

Dear Sandra:

At page 6 of your circulation you state that the law of the case might provide an independent state ground precluding federal review "when a prior state decision was subject to review here." If the prior decision was actually reviewed on the merits--either after a grant of certiorari or by dismissing for want of a substantial federal question in the case of an appeal--I would agree with the statement. But I strongly disagree with the implication that the denial of certiorari in a case which was "subject to review" could in any sense be considered a decision on the merits. Could you see your way clear to changing the sentence to read something like this: "The same concerns, of course, do not apply when a prior state decision has actually been reviewed by this Court."

Would you also consider revising the sentence on page 7 that ends that paragraph to read something like this: "Because the Mississippi Supreme Court's first decision was not subjected to our review on the merits, the court's subsequent invocation of the law of the case does not prevent us from reviewing federal questions determined in the first appeal."

Apart from my problems with this paragraph, I am prepared to join your opinion.

Respectfully,



Justice O'Connor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

81-451 - 48, 58

June 2, 1982

Re: 81-451 - Hathorn v. Lovorn

Dear Sandra:

Please join me. If I have any problem with your revision, I'll let you know.

Respectfully,



Justice O'Connor

Copies to the Conference

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

From: Justice O'Connor

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-451

RALPH HATHORN, ET AL., PETITIONERS *v.*
MRS. BOBBY LOVORN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSISSIPPI

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari to decide whether a state court may order implementation of a change in election procedure over objections that the change is subject to preclearance under § 5 of the Voting Rights Act of 1965.¹

¹Section 5 provides in relevant part:

"Whenever a [covered] State or political subdivision . . . 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, 1964, . . . 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 interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 2, 1982

No. 81-451 Hathorn v. Lovorn

Dear John,

I will circulate a revision of pages 6 and 7 to accommodate your concerns. The original draft was not intended to suggest that denial of certiorari is a decision on the merits. The essential point for purposes of this opinion is that the first judgment was not final. We need not decide the significance of the Rio Grande holding in this case.

Please let me know if the revisions fail to meet your concerns.

Sincerely,



Justice Stevens

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85 JUN-5 6301

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 2, 1982

No. 81-451 Hathorn v. Lovorn

Dear Bill,

I will circulate a revision of pages 6 and 7 along the lines suggested by John. I hope the changes will also meet your concerns. Let me know if they do not.

Sincerely,



Justice Brennan

Copies to the Conference

95 JUN -3 6 1982

PP. 2, 6, 7, 15

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

From: **Justice O'Connor**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-451

**RALPH HATHORN, ET AL., PETITIONERS v.
MRS. BOBBY LOVORN, ET AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSISSIPPI**

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

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PP. 11, 15

Footnotes Renumbered

~~SDO
Please see me
for~~

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

From: Justice O'Connor

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Recirculated: JUN 8 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-451

RALPH HATHORN, ET AL., PETITIONERS *v.*
MRS. BOBBY LOVORN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSISSIPPI

[June —, 1982]

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PP. 2, 11

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

From: Justice O'Connor

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-451

**RALPH HATHORN, ET AL., PETITIONERS v.
MRS. BOBBY LOVORN, ET AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSISSIPPI**

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

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