

The Burger Court Opinion Writing Database

Federal Election Commission v. National Right to Work Committee

459 U.S. 197 (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

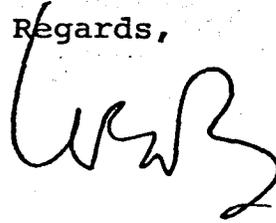
November 25, 1982

Re: No. 81-1506, Federal Election Comm'n. v.
Natl. Right to Work Comm.

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

after
P.S. ^{page 6,} Small suggestion: Line 2 following the quote of FEC Regulations, ~~following~~ "incorporation" insert, "filed by respondent"; or alternatively "When respondent filed its articles of incorporation it declared that it had no "members" and the Commission, having taken respondent at its own word, contends this is dispositive. We agree!"--
(Or words to that effect.)

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 29, 1982

RE: No. 81-1506 FEC v. National Right to Work
Committee

Dear Bill:

I appreciate the care you have taken in this case to draft an opinion with which a broad majority of the Court can agree. I am prepared to join, but one small point troubles me.

On page 14 of your draft, you reject respondent's argument that the statute is unconstitutionally vague. The last two sentences of that paragraph (followed by your citation of Broadrick) differ somewhat in their implications for future vagueness and overbreadth cases. The first points out that "hardly anyone would subscribe to a definition of the term ["members"] which included all of those solicited by respondent" (emphasis added), while the second states that "NRWC's activities extended to people who under no conceivable interpretation of the statutory language could be members." Some might read the first sentence, in juxtaposition with the reference to Broadrick, to mean that a party may not object to the vagueness or overbreadth of a regulatory statute on constitutional grounds if some of its activity clearly fell outside of both statutory and constitutional protections. The second sentence is ambiguous on this point, but it more fairly reflects the facts of this case, in which none of those solicited by NRWC came within a reasonable interpretation of the statutory term.

I have never been comfortable with Broadrick and the type of reasoning it represents. For purposes of this case, I am prepared to go along, but only if it is made clear that (as in Broadrick itself) none of respondent's activity at issue in this case was arguably authorized by the statute or the Constitution.

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

December 6, 1982

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

DEC 8 5:33 PM '82

RE: No. 81-1506 Federal Election Comm'n v. National
Right to Work Committee

Dear Bill:

I agree.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1982

Re: 81-1506 - Federal Election Commission v.
National Right to Work Committee

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

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cpm

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DIVISION OF MANUSCRIPTS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 2, 1982

Re: No. 81-1506 - Federal Election Commission v.
National Right to Work Committee

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Justice Rehnquist

cc: The Conference

LIBRARY OF CONGRESS
DIVISION OF THE MANUSCRIPTS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 30, 1982

Re: No. 81-1506 - FEC v. National Right to Work Comm.

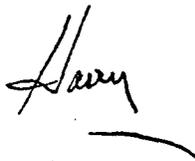
Dear Bill:

Please join me.

I would feel a lot easier if somewhere in your opinion you could include some expression to the effect that the propriety of the \$10,000 civil penalty may be considered on remand. You may recall that I expressed concern about this at conference and that several others joined me in that concern.

My copy of the second draft of your opinion is without the final lines of footnote 8. You may wish to check on whether this is also true of all other copies.

Sincerely,



Justice Rehnquist

cc: The Conference

.85 11/30 10:20

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 1, 1982

81-1506 Federal Election Commission v.
National Right to Work Committee

Dear Bill,

I am in substantial agreement with your draft opinion. There is one point, however, that I find more troubling than you did. The District Court assessed a \$10,000 civil penalty because it found that the NRWC had willfully violated the Act. Since the Court of Appeals reversed on other grounds, it did not review this finding. You now appear to have disposed of the point in half a sentence in footnote 8.

This disposition of the issue really does not do justice to NRWC's argument. I agree that the NRWC violated the Act in soliciting its "active members," and that the District Court was justified in ordering reimbursement of the contributions. But one hardly can say that our present interpretation of the Act was so clear that the NRWC's failure to follow it six years ago was a willful violation.

After all, the Court of Appeals unanimously agreed with the NRWC's interpretation. Since the Court of Appeals did not review the District Court's finding of willfulness, I think we should remand the case for further review. Alternatively, I suppose we could dispose of this issue here.

Indeed, Bill, in view of the decision of CADDC, can we properly say that "under no conceivable interpretation" could the statutory language be read to permit NRWC's solicitations? (See last sentence on p. 14).

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

.85 10 31 1982

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 6, 1982

81-1506 Federal Election Commission v. National Right
to Work Committee

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

85 DEC 6 1982

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

From: **Justice Rehnquist**

NOV 24 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1506

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS
v. NATIONAL RIGHT TO WORK COMMITTEE ET AL

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

[November —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question in the case ultimately comes down to whether respondent National Right to Work Committee ("NRWC") limited its solicitation of funds to "members" within the meaning of 2 U. S. C. § 441b(b)(4)(C).¹

In April of 1977, petitioner, the Federal Election Commis-

¹ As will appear from the following discussion, the phrasing of this question is but the tip of the statutory iceberg. The Federal Election Campaign Act of 1971 ("the Act") makes it "unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. § 441b(a). The term "contribution" is defined broadly, 2 U. S. C. § 441b(b)(2)(C), to include any sort of transfer of money or services to various political entities, but excluded from that definition is "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a . . . corporation without capital stock." The Act goes on to make it unlawful, except as thereafter provided, "for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and its families and its executive or administrative personnel and their families. . . ." 2 U. S. C. § 441b(b)(4)(A). Finally, 2 U. S. C. § 441b(b)(4)(C) states that the prohibition just quoted "shall not prevent a . . . corporation without capital stock, or a separate segregated fund established by a . . . corporation without capital stock, from soliciting contributions to such a fund from members of such . . . corporation without capital stock."

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

From: Justice Rehnquist

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12, 3, 5, 6, 8, 11, 12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1506

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS
v. NATIONAL RIGHT TO WORK COMMITTEE ET AL

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

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 30, 1982

Re: No. 81-1506 FEC v. National Right to
Work Committee

Dear Bill:

I think I can accommodate your suggestion, though because of the state of the record I don't think we can flatly say that none of NRWC's solicitation extended to people who "under no conceivable interpretation of the statutory language could be members." The only solid finding on the factual issue is that of the District Court, which said:

"In all, NRWC contacted approximately 267,000 persons and raised \$77,474. Both NRWC and ERCC concede that none of those persons solicited between May 7 and September 15, 1976, were stockholders of NRWC or known to be executive or administrative personnel of NRWC or the families of such persons." Pet. 22a-23a.

I think I would be comfortable, on the basis of this finding, with revising the last two sentences to read as follows, if you could thereby be persuaded to join the opinion:

"There may be more than one way under the statute to go about determining who are 'members' of a nonprofit corporation, and the statute may leave room for uncertainty at the periphery of its exception for solicitation of 'members.' However, on this record we are satisfied that NRWC's activities extended in large part, if not in toto,

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to people who under no conceivable interpretation of the statutory language could be members."

Sincerely,



Justice Brennan

cc: The Conference

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Justice Brennan
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Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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Bq 14x15
wd R
Please join me
M

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1506

**FEDERAL ELECTION COMMISSION, ET AL., PETI-
TIONERS v. NATIONAL RIGHT TO WORK
COMMITTEE ET AL**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

[November —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question in the case ultimately comes down to whether respondent National Right to Work Committee ("NRWC") limited its solicitation of funds to "members" within the meaning of 2 U. S. C. § 441b(b)(4)(C).¹

In April of 1977, petitioner, the Federal Election Commis-

¹As will appear from the following discussion, the phrasing of this question is but the tip of the statutory iceberg. The Federal Election Campaign Act of 1971 ("the Act") makes it "unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. § 441b(a). The term "contribution" is defined broadly, 2 U. S. C. § 441b(b)(2)(C), to include any sort of transfer of money or services to various political entities, but excluded from that definition is "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a . . . corporation without capital stock." The Act goes on to make it unlawful, except as hereinafter provided, "for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and its families and its executive or administrative personnel and their families. . . ." 2 U. S. C. § 441b(b)(4)(A). Finally, 2 U. S. C. § 441b(b)(4)(C) states that the prohibition just quoted "shall not prevent a . . . corporation without capital stock, or a separate segregated fund established by a . . . corporation without capital stock, from soliciting contributions to such a fund from members of such . . . corporation without capital stock."

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Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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Bq 5+14

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1506

**FEDERAL ELECTION COMMISSION, ET AL., PETI-
TIONERS v. NATIONAL RIGHT TO WORK
COMMITTEE ET AL**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[November —, 1982]

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Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1506

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS v. NATIONAL RIGHT TO WORK COMMITTEE ET AL

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

[November —, 1982]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 29, 1982

Re: 81-1506 - Federal Election Commission
v. National Right to Work Committee

Dear Bill:

Please join me.

Although I think the Chief is correct that the state law ground might be sufficient to dispose of the case, I really think the way you have written the opinion is much more effective and therefore I would be inclined to urge you to keep it as is. However, I will join in either event.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

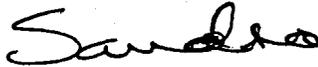
December 2, 1982

No. 81-1506 FEC v. National Right to Work Comm.

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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.85 81-1506

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