

The Burger Court Opinion Writing Database

Port Arthur v. United States

459 U.S. 159 (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

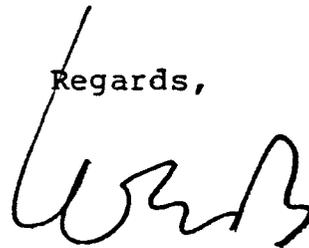
December 10, 1982

RE: 81-708 - City of Port Arthur, Texas v. United States

Dear Byron:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "W. E. B.", written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1982

RE: No. 81-708 City of Port Arthur, Texas v. U.S.

Dear Byron:

I agree.

Sincerely,



Justice White

Copies to the Conference

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

From: Justice White

Circulated: 11-10-82

Recirculated: _____

~~BRW
Phone
11/12~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

**CITY OF PORT ARTHUR, TEXAS, APPELLANT v.
UNITED STATES ET AL.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

[November —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

Section 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c, requires that when a state or political subdivision covered by the Act¹ adopts or seeks to administer any change in its standards, practices, or procedures with respect to voting, it must obtain a preclearance either from the Attorney General of the United States or by obtaining a declaratory judgment from the District Court for the District of Columbia that the proposed change has neither the purpose nor the effect of denying or abridging the right to vote on account of race.² *Perkins v. Matthews*, 400 U. S. 379 (1971),

¹ It is undisputed that the city of Port Arthur is a political subdivision to which § 5 is applicable.

² Section 5 in relevant part provides as follows:

Whenever 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 first 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 . . . 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)(92) of this title,

Join
11/12

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

From: Justice White

Circulated: _____

Recirculated: 17 NOV 1982

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

CITY OF PORT ARTHUR, TEXAS, APPELLANT *v.*
UNITED STATES ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

[November —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

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¹ It is undisputed that the city of Port Arthur is a political subdivision to which § 5 is applicable. See 46 Fed. Reg. 870, 880.

² Section 5 in relevant part provides as follows:

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 15, 1982

Re: No. 81-708 - City of Port Arthur, Texas v. U.S.

Dear Byron:

Please join me.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 15, 1982

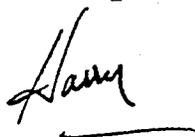
Re: No. 81-708 - City of Port Arthur, Texas v. United States

Dear Byron:

Please join me.

I am a little confused by the three references on page 8 to the "Court of Appeals." Should not these be the District Court, or have I overlooked something?

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 17, 1982

81-708 City of Port Arthur v. United States

Dear Byron:

In due time, I will circulate a dissent.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

From: Justice Powell

Circulated: NOV 22 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

CITY OF PORT ARTHUR, TEXAS, APPELLANT *v.*
UNITED STATES ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

[November —, 1982]

JUSTICE POWELL, dissenting.

Today, this Court affirms the District Court's order, concluding that although the 4-2-3 plan ensures proportional representation for the black voting age population, a District Court nevertheless is free under §5—in the exercise of a newly perceived equitable jurisdiction—to require a city to “enhance” the chances of increased minority representation on a city's governing body. In this case, the perceived enhancement would be that a plurality, rather than a majority election requirement, would give black citizens a better chance of capturing—in addition to the three district seats assured them—the two at-large seats. *Ante*, p. 8.¹ Because the Court's decision is irreconcilable with *City of Richmond v. United States*, 422 U. S. 358 (1975), and authorizes a standardless equitable jurisdiction in district courts, I dissent.

I

In *City of Richmond*, the city annexed territory reducing

¹The Court has recognized that a majority vote requirement in at-large elections, unless adopted as a change for discriminatory purposes, is a valid and long-accepted practice “that is followed by literally thousands of municipalities and other local governmental units throughout the Nation.” See *City of Mobile v. Bolden*, 446 U. S. 55, 60 (1980) (plurality opinion).

November 29, 1982

CONFIDENTIAL

81-708 City of Port Arthur v. United States

Dear Chief:

Although you voted tentatively the "other way", I hope you will take a close look at my dissent.

Byron's opinion finds for the first time a general equitable jurisdiction in the District Courts of the District of Columbia in reviewing decisions of the Attorney General under §5. In this case the Attorney General had agreed to a plan that assured proportional representation to black citizens. The District Court nevertheless, exercising equitable jurisdiction, declined to accept the Attorney General's view. Byron's opinion affirms the District Court, holding that under its equitable jurisdiction the DC properly could "enhance the political strength of black voters".

In sum, the Court's opinion adopts a broadened and standardless discretion in District Courts here to override decisions of the Attorney General as well as the political decisions of local governments. The Voting Rights Act confers no such discretion on the District Court.

This would be an appropriate case for one of your typically powerful dissents.

Sincerely,

The Chief Justice

lfp/ss

NOV 29 1986

Changes: 1, 5, 6, 7

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

From: Justice Powell

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

**CITY OF PORT ARTHUR, TEXAS, APPELLANT v.
UNITED STATES ET AL.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

[December —, 1982]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
dissenting.

The Court affirms the District Court's order, concluding that although the 4-2-3 plan ensures proportional representation for the black voting age population, a District Court nevertheless is free under §5—in the exercise of a newly perceived equitable jurisdiction—to require a city to “enhance” the chances of increased minority representation on a city's governing body. In this case, the perceived enhancement would be that a plurality, rather than a majority election requirement, would give black citizens a better chance of capturing—in addition to the three district seats assured them—the two at-large seats. *Ante*, p. 8.¹ Because the Court's decision is irreconcilable with *City of Richmond v. United States*, 422 U. S. 358 (1975), and authorizes a standardless equitable jurisdiction in district courts, I dissent.

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¹The Court has recognized that a majority vote requirement in at-large elections, unless adopted as a change for discriminatory purposes, is a valid and long-accepted practice “that is followed by literally thousands of municipalities and other local governmental units throughout the Nation.” See *City of Mobile v. Bolden*, 446 U. S. 55, 60 (1980) (plurality opinion).

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Nov. 29, 1982

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

Changes: 1, 5
9

From: Justice Powell

Circulated: _____

Recirculated: NOV 30 1982

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

**CITY OF PORT ARTHUR, TEXAS, APPELLANT v.
UNITED STATES ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

[December —, 1982]

JUSTICE POWELL, with whom JUSTICE REHNQUIST and JUSTICE O'CONNOR join, dissenting.

The Court affirms the District Court's order, concluding that although the 4-2-3 plan ensures proportional representation for the black voting age population, a District Court nevertheless is free under §5—in the exercise of a newly perceived equitable jurisdiction—to require a city to “enhance” the chances of increased minority representation on a city's governing body. In this case, the perceived enhancement would be that a plurality, rather than a majority election requirement, would give black citizens a better chance of capturing—in addition to the three district seats assured them—the two at-large seats. *Ante*, p. 8.¹ Because the Court's decision is irreconcilable with *City of Richmond v. United States*, 422 U. S. 358 (1975), and authorizes a standardless equitable jurisdiction in district courts, I dissent.

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DEC 8 1982

Change: page 4 n. 3

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

From: Justice Powell

Circulated: _____

Recirculated: DEC 8 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-708

CITY OF PORT ARTHUR, TEXAS, APPELLANT v.
UNITED STATES ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

[December —, 1982]

JUSTICE POWELL, with whom JUSTICE REHNQUIST and
JUSTICE O'CONNOR join, dissenting.

The Court affirms the District Court's order, concluding that although the 4-2-3 plan ensures proportional representation for the black voting age population, a District Court nevertheless is free under §5—in the exercise of a newly perceived equitable jurisdiction—to require a city to "enhance" the chances of increased minority representation on a city's governing body. In this case, the perceived enhancement would be that a plurality, rather than a majority election requirement, would give black citizens a better chance of capturing—in addition to the three district seats assured them—the two at-large seats. *Ante*, p. 8.¹ Because the Court's decision is irreconcilable with *City of Richmond v. United States*, 422 U. S. 358 (1975), and authorizes a standardless equitable jurisdiction in district courts, I dissent.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 23, 1982

Re: No. 81-708 City of Port Arthur v. United States

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 12, 1982

Re: 81-708 - City of Port Arthur, Texas
v. United States

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

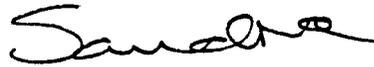
November 17, 1982

Re: No. 81-708 City of Port Arthur v. U.S.

Dear Byron,

I will await further writing on this case.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 29, 1982

No. 81-708 City of Port Arthur v. U. S.

Dear Lewis,

Please join me in your dissenting opinion.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 29, 1982

No. 81-708 City of Port Arthur v. U. S.

Dear Lewis,

Please join me in your dissenting opinion.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

Lewis:
This is precisely on target
and I only wish we had
two more to join it!
S.