The Burger Court Opinion Writing Database

McCain v. Lybrand

465 U.S. 236 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

7/16

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

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1983

Re: 82-282 - McCain v. Lybrand

Dear John:

I join your Per Curiam dated May 20.

Regards,

WEB

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1983

MEMORANDUM TO THE CONFERENCE:

RE: 82-282 - McCain v. Lybrand

Thurgood's and Bill Rehnquist's dissents tip me to noting this case for oral argument. The Per Curiam makes out a strong but close case and I will be more comfortable hearing arguments.

Regards,

WEB

HAB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 23, 1983

Re: No. 82-282

McCain v. Lybrand

Dear John:

I have serious doubt that an issue like this should be decided summarily. If, however, there are as many as seven of us who think otherwise and are willing to join your per curiam, I am not disposed to dissent.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 23, 1983

Re: 82-282 -

McCain and Spencer v. Lybrand

Dear John,

I agree with your per curiam reversing the District Court without argument.

Sincerely yours,

Byron

Justice Stevens

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: JUN 7 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

THOMAS C. McCAIN AND WILLIAM SPENCER, ETC. *v.* CHARLES E. LYBRAND ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

No. 82-282. Decided June ——, 1983

MARSHALL, J., dissenting.

I cannot agree that this case should be disposed of summarily.

This Court's rules governing appeals were not designed to permit a decision in favor of the appellant simply on the basis of the jurisdictional statement and the motion to dismiss or affirm. The rules direct an appellee to submit "a motion to dismiss or affirm on any . . . ground the appellee wishes to present as a reason why the Court should not *set the case for argument.*" Rule 16(1)(d) (emphasis added). The rules do not instruct the appellee to provide reasons why the Court should not *reverse*. While the appellee may address the merits of the questions presented on appeal if "it is manifest that th[ose] questions . . . are so unsubstantial as not to need further argument," Rule 16(1)(c), he is not instructed to address the merits where, as here, the questions presented are so substantial that a reversal of the judgment below may be warranted.

If the Court believes that oral argument in this case is unnecessary, "it should at least afford the parties a chance to brief [the] issue[s]. This could be done by merely issuing an order (1) noting that the case will be disposed of without oral argument and (2) permitting both sides to file briefs on the merits." *Maggio* v. *Fulford*, —— U. S. ——, —— (1983) (MARSHALL, J., dissenting).

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1983

Re: No. 82-282 - McCain v. Lybrand

Dear John:

I join your per curiam.

Sincerely,

Harry

Justice Stevens

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: MAY 24 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

THOMAS C. McCAIN AND WILLIAM SPENCER, ETC. *v.* CHARLES E. LYBRAND ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

No. 82-282. Decided May ——, 1983

~~The petition for writ of certiorari is denied.~~

JUSTICE REHNQUIST, dissenting.

This appeal involves two difficult issues. First, it requires determining the question when a voting change "*has been submitted . . . to the Attorney General*" within the meaning of § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973c. Second, it involves making the factual determination whether the standard for "submission," whatever it may be, was satisfied in this case. Because the Court improperly resolves both questions, I dissent.

Section 5 of the Voting Rights Act provides that a change in the voting laws of certain states "may be enforced without [approval by the District Court for the District of Columbia] if the [change] *has been submitted* . . . to the Attorney General and the Attorney General has not interposed an objection within sixty days. . . ." (emphasis added). Thus, unless the Attorney General has precleared a covered change, or a declaration to the same effect is obtained from the District Court for the District of Columbia, the voting change may not be enforced, and if it is, an action lies under § 5 to enjoin such implementation.

The Court properly observes that the leading authority on the question of whether a voting change "has been submitted" is *United States* v. *Sheffield Bd. of Comm'rs*, 435 U. S. 110 (1978). There, we wrote, "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 19, 1983

MEMORANDUM TO THE CONFERENCE

Re: 82-282 - McCain v. Lybrand

This Voting Rights Act case was relisted to give me an opportunity to try my hand at preparing a per curiam reversal. I believe that reversal is clearly appropriate, because the District Court's judgment is inconsistent with the preclearance requirements of Section 5 of the Act. It is proper, however, to bring to the Court's attention the fact that the per curiam sets forth a principle that has not yet been squarely enunciated in this Court's cases: that there is a difference between the scope of the Attorney General's power to interpose an objection in order to prevent implementation of an electoral change, and his duty to interpose an objection if he is not to be foreclosed from objecting to a particular feature in the future.

New principle

As long as an electoral scheme is submitted for preclearance, the Attorney General may block the implementation of any feature of the scheme that constitutes a "change" covered by Section 5. Consistent with Part II of JUSTICE POWELL's opinion in City of Lockhart v. United States, decided February 23, 1983, the method of holding elections at large with candidates from specified residential districts was an integral part of the Edgefield County scheme adopted in 1971, and it could have been blocked by the Attorney General had he chosen to object to the 1971 submission. But only because not previously cleared

Nevertheless, not all covered "changes" are automatically encompassed in a jurisdiction's formal submission to the Attorney General. The Attorney General's guidelines set forth a series of specific and eminently sensible requirements which the jurisdiction must meet in order to bring changes to the Attorney General's attention, and to give him sufficient information to perform his

statutory duties. If a feature of a scheme--particularly one that is found in the preexisting scheme--is not explicitly presented to the Attorney General in accordance with the guidelines, then it simply has not been "submitted." If the Attorney General preclears the submission, he cannot be deemed to have precleared any features other than those that have been properly "submitted." Thus, in this case, the 1971 submission did not include the at-large feature, and the Attorney General's preclearance did not encompass it. Its implementation is in violation of Section 5.

I am confident that this interpretation of the statute is in accord with the purposes of the Act and with our prior cases dealing with requirements for submission of electoral changes to the Attorney General. Nevertheless, others may reasonably believe that the legal principle set forth in the proposed per curiam deserves plenary consideration. In all events, the attached writing spells out the approach that I consider proper and should at least provide the basis for discussion.

Respectfully,

John

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

From: **Justice Stevens**

Circulated: MAY 20 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

THOMAS C. McCAIN AND WILLIAM SPENCER, ETC. *v.* CHARLES E. LYBRAND ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

No. 82-282. Decided May ——, 1983

PER CURIAM.

Appellants are black voters of Edgefield County, South Carolina; appellees are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners, and the president of the Executive Committee of the Edgefield County Democratic Party. At various stages of this lawsuit, initiated in 1974, the parties have litigated several constitutional and statutory issues relating to at-large voting for members of the county council. The question before us on this appeal is whether the three-judge District Court correctly rejected appellants' contention that the county's use of an at-large system violated Section 5 of the Voting Rights Act of 1965.[1] We conclude that the District Court's decision was erroneous, be-

[1] Section 5, 79 Stat. 439, 42 U. S. C. § 1973c (1976), provides that covered jurisdictions (including Edgefield County) may enforce a "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" only after obtaining preclearance in one of two ways: (i) submitting the change in voting practice to the Attorney General of the United States, who does not interpose an objection within 60 days after the submission is complete; or (ii) filing suit and obtaining a declaratory judgment in the United States District Court for the District of Columbia. Under either procedure, the jurisdiction requesting preclearance has the burden of demonstrating that the change in voting practice does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or language minority status. *Georgia* v. *United States*, 411 U. S. 526, 538 (1973); see 28 CFR § 51.19 (1972).

pp. 2, 3, 4, 5, 6, 7
Footnotes Renumbered

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

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 25 '83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

THOMAS C. McCAIN AND WILLIAM SPENCER, ETC. *v.* CHARLES E. LYBRAND ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

No. 82-282. Decided May ——, 1983

PER CURIAM.

Appellants are black voters of Edgefield County, South Carolina; appellees are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners, and the president of the Executive Committee of the Edgefield County Democratic Party. At various stages of this lawsuit, initiated in 1974, the parties have litigated several constitutional and statutory issues relating to at-large voting for members of the county council. The question before us on this appeal is whether the three-judge District Court correctly rejected appellants' contention that the county's use of an at-large system violated Section 5 of the Voting Rights Act of 1965.[1] We conclude that the District Court's decision was erroneous, be-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 20, 1983

No. 82-282 McCain v. Lybrand

Dear John,

I agree with your per curiam.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 9, 1983

Re: No. 82-282 McCain v. Lybrand

MEMORANDUM TO THE CONFERENCE

If a per curiam fails to emerge with sufficient votes in this case, I will vote to note to settle the question of the application of §5 preclearance to previous uncleared changes.

Sincerely,

Sandra