

The Burger Court Opinion Writing Database

United Building & Construction Trades Council of Camden County v. Mayor and Council of Camden

465 U.S. 208 (1984)

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

WJB agreed
by phone
(per OAL)
9-10-83

September 19, 1983

CHAMBERS OF
THE CHIEF JUSTICE

RE: No. 81-2110, United Building and Construction Trades
Council of Camden County v. Mayor and City of Camden

MEMORANDUM TO THE CONFERENCE:

We noted probable jurisdiction in United Building and
Construction Trades Council of Camden County v. Mayor and City of
Camden, No. 81-2110. The case was to be set for argument on
Monday, October 31, and this was scheduled to be made public
Tuesday, September 20.

Here Appellant challenges as violative of the Privileges and
Immunities, and the Equal Protection Clauses a municipal
ordinance which requires that 40% of the labor force on the
larger of the city's public works projects be city residents, and
which defines "resident" as anyone who has been domiciled in the
city for "a continuous period of twelve (12) consecutive months
prior to the application for employment."

After Appellant filed its brief, but before Appellees filed
theirs, the city amended its ordinance to eliminate the 12-month
residency requirement and to limit more clearly the scope of the
ordinance to projects funded with municipal monies. Appellees
argue that the amendment renders moot the Equal Protection claim.
In addition, Appellees argue that there is an inadequate factual
record on which to base a decision on the Privileges and
Immunities Clause issue. This is so, they say, because the
combination of peculiar New Jersey procedures and the
certification of the appeal to the New Jersey Supreme Court
permitted the case to proceed from a non-adjudicatory,
administrative review in the State Treasurer's office directly to
the New Jersey Supreme Court.

The Clerk of the Court informs me that Appellants plan to
file a reply brief within three weeks in which they will discuss
the mootness issue. I think it is not unlikely that they will
discuss, too, the other problem raised by Appellees. In light of
these developments, it seems wise at this point to instruct the
Clerk to remove the case from the calendar until after the reply
brief is received and the Court has had the opportunity to give
it consideration. The case can be rescheduled after we have had
a chance to discuss potential problems, if there be any, at the
September 26 Conference.

Absent dissent, I will instruct the Clerk to remove the case
from the November calendar.

To save on memos, you may call Miss Seagle in my office.

Regards,

WJB

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

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1984

RECEIVED
SUPREME COURT
JUSTICE

81-2110

'84 JAN 33 A10:07

Re: United Building & Construction
v. Mayor of Camden

Dear Bill:

Since I will be away from Washington for two meetings (and a couple of days sleep in between), no dissent has emerged, and having taken another look, I now join your latest circulation.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 3, 1984

No. 81-2110

United Building & Construction
Trades Council of Camden County
& Vicinity v. Mayor and Council of
the City of Camden, et al.

Dear Bill,

I agree.

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

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JUSTICE BYRON R. WHITE

January 6, 1984

'84 JAN -6 P3:08

Re: 81-2110 -

United Building and Construction Trades
Council of Camden County and Vicinity v.
Mayor and Council of The City of Camden

Dear Bill,

I join your circulating draft provided you add the following five letters at the appropriate point in your opinion (they are here listed in alphabetical order):

i-n-n-o-t

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

September 20, 1983

Re: No. 81-2110 - United Building and Construction
Trades Council of Camden County v. Mayor and
City of Camden

Dear Chief:

I fear we are rushing too fast on removing cases
from the calendar.

Here we are removing a case because the "appellants
plan to file a reply brief within three weeks in which
they will discuss the mootness issue". This is not
sufficient for me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 4, 1984

Re: No. 81-2110-United Building & Construction
Trades Council of Camden County and Vicinity
v. Mayor & Council of the City of Camden

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

From: Justice Blackmun

Circulated: FEB 6 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2110

UNITED BUILDING AND CONSTRUCTION TRADES
COUNCIL OF CAMDEN COUNTY AND VICINITY,
APPELLANT *v.* MAYOR AND COUNCIL OF
THE CITY OF CAMDEN ET AL.,

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[February —, 1984]

JUSTICE BLACKMUN, dissenting.

For over a century the underlying meaning of the Privileges and Immunities Clause of the Constitution's Article IV¹ has been regarded as settled: at least absent some substantial, noninvidious justification, a State may not discriminate between its own residents and residents of other States on the basis of state citizenship.² See generally *Hicklin v. Orbeck*, 437 U. S. 518, 523-526 (1978); *Toomer v. Witsell*, 334 U. S. 385, 395 (1948); *Hague v. CIO*, 307 U. S. 496, 511 (1939) (opinion of Roberts, J.); *Slaughter-House Cases*, 16 Wall. 36, 77 (1873); *Paul v. Virginia*, 8 Wall. 168, 180 (1869).

Today, however, the Court casually extends the scope of the Clause by holding that it applies to laws that discriminate among state residents on the basis of *municipal* residence, simply because discrimination on the basis of municipal residence disadvantages citizens of other States "*ipso facto*." *Ante*, at 8. This novel interpretation arrives accompanied by little practical justification and no historical or textual

¹"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U. S. Const., Art. IV, §2, cl. 1.

²As the Court points out, it has come to treat the terms "citizen" and "resident" interchangeably for purposes of Privileges and Immunities Clause analysis. *Ante*, at 7-8. For the sake of simplicity I shall do the same, except where the context requires a distinction to be drawn.

STYLISTIC CHANGES
pp. 9-11

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

From: Justice Blackmun

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2110

UNITED BUILDING AND CONSTRUCTION TRADES
COUNCIL OF CAMDEN COUNTY AND VICINITY,
APPELLANT *v.* MAYOR AND COUNCIL OF
THE CITY OF CAMDEN ET AL.,

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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SUPREME COURT
JUSTICE LEWIS F. POWELL, JR.

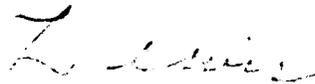
January 12, 1984⁸⁴ JAN 13 A9:53

81-2110 United Building v. Mayor and Council

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

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

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~~WHR~~
Jh

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2110

**UNITED BUILDING AND CONSTRUCTION TRADES
COUNCIL OF CAMDEN COUNTY AND VICINITY,
APPELLANT v. MAYOR AND COUNCIL OF
THE CITY OF CAMDEN ET AL.**

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[January —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

A municipal ordinance of the City of Camden, New Jersey requires that at least 40% of the employees of contractors and subcontractors working on City construction projects be Camden residents. Appellant, the United Building and Construction Trades Council of Camden and Vicinity (the Council), challenges that ordinance as a violation of the Privileges and Immunities Clause, Article IV, §2, of the United States Constitution.¹ The Supreme Court of New Jersey rejected appellant's privileges and immunities attack on the ground that the ordinance discriminates on the basis of *municipal*, not state, residency. The court "decline[d] to apply the Privileges and Immunities Clause in the context of a municipal ordinance that has identical effects upon out-of-state citizens and New Jersey citizens not residing in the locality." 88 N. J. 317, 342, 443 A. 2d 148, 160 (1982). We conclude that the challenged ordinance is properly subject to the strictures of the Clause. We therefore reverse the judgment of the Supreme Court of New Jersey and remand the case for a

¹"The citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States." United States Constitution, Art. IV, §2, cl. 1.

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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**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2110

UNITED BUILDING AND CONSTRUCTION TRADES
COUNCIL OF CAMDEN COUNTY AND VICINITY,
APPELLANT *v.* MAYOR AND COUNCIL OF
THE CITY OF CAMDEN ET AL.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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STYLISTIC CHANGES THROUGHOUT

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

PP 8-9, 12

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2110

UNITED BUILDING AND CONSTRUCTION TRADES
COUNCIL OF CAMDEN COUNTY AND VICINITY,
APPELLANT *v.* MAYOR AND COUNCIL OF
THE CITY OF CAMDEN ET AL.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[February —, 1984]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1984

Re: 81-2110 - United Building & Construction
Trades Council of Camden v. Mayor and
Council of Camden

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 21, 1983

No. 81-2110 United Building & Construction Trades
Council of Camden County v. Mayor
and City of Camden

Dear Chief,

I agree this case should be removed from the
calendar for the time being.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1984

No. 81-2110 United Building and Construction
Trades Council of Camden County v. Mayor
and Council of the City of Camden

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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