

# The Burger Court Opinion Writing Database

## *Escambia County v. McMillan*

466 U.S. 48 (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

CHAMBERS OF  
THE CHIEF JUSTICE

February 2, 1984

Re: 82-1295 - Escambia Cty., Fla. v. McMillan

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

SUPREME COURT  
JUSTICE

'84 FEB -2 P157

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 13, 1984

RECEIVED  
SUPREME COURT  
JUSTICE Wm. J. BRENNAN, JR.

'84 FEB 13 P2:43

No. 82-1295

Escambia County, Florida  
v. McMillan

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Dear Lewis,

Please join me in your proposed Per  
Curiam.

Sincerely,



Justice Powell

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 10, 1984

Re: 82-1295 -

Escambia County, Florida v. McMillan

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Dear Lewis,

Please join me.

Sincerely,

*Byron*  
*cpm*

Justice Powell

cpm

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

From: **Justice Marshall**

Circulated: 2/2/84

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1295

**ESCAMBIA COUNTY, FLORIDA, ET AL. v. HENRY T.  
MCMILLAN ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

[February —, 1984]

**JUSTICE MARSHALL** dissenting.

Contrary to appellants' contention,<sup>1</sup> the Court of Appeals for the Fifth Circuit did not invalidate Article VIII, Section 1(e) of the Florida Constitution, which generally requires county commissioners to be elected at-large. Rather, the Court of Appeals merely affirmed the District Court's finding that the Escambia County Commissioners refused to exercise certain powers with which they were invested by the state constitution<sup>2</sup> in order to maintain, for racially discriminatory purposes, an at-large voting scheme that drastically diluted the political strength of Negro voters. See *McMillan v. Escambia County, Fla.*, 688 F. 2d 960, 969 (CA5 1982). Because the Court of Appeals did not invalidate any state law, consideration of this case as an appeal under 28 U. S. C. § 1254(2) is clearly improper. See *Silkwood v. Kerr-McGee*

<sup>1</sup> See Juris. Statement 2-3.

<sup>2</sup> The Florida Constitution empowers a county to change its electoral scheme from at-large voting to selection on the basis of single-member districts. See Fla. Const., Art. VIII, § 1(c); Fla. Stat. §§ 125.60-64 (1981). Such a change must be ratified by the majority of voters within a county. The District Court found that the Escambia County Commission refused to permit the electorate to vote on proposals to establish a single-member district voting scheme because of the Commissioners' racially discriminatory intent to maintain a voting system that nullified the political potential of Negro voters. See App. to Juris. Statement 96a-98a.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 2, 1984

RECEIVED  
SUPREME COURT OF THE U.S.  
JUSTICE HARRY A. BLACKMUN

'84 JAN 33 A10:07

Re: No. 82-1295 - Escambia County, Fla. v. McMillan

Dear Lewis:

Please join me in your proposed Per Curiam. I, for one, would not allow costs in this case, and I would hope that we can add "No costs allowed" at the end of the opinion.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 15, 1984

Re: No. 82-1295 - Escambia County, Fla. v. McMillan

Dear Lewis:

My suggestion of February 2 as to the disallowance of costs in this case, not surprisingly, has not caught fire. Would you therefore add the following at the end of your per curiam opinion:

"JUSTICE BLACKMUN, while joining the Court's per curiam opinion, would disallow costs in this case."

Sincerely,



Justice Powell

cc: The Conference

01/31

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

From: **Justice Powell**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1295

ESCAMBIA COUNTY, FLORIDA, ET AL. v.  
HENRY T. McMILLAN ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

[February —, 1984]

PER CURIAM.

This appeal presents questions as to the appropriate standards of proof and appropriate remedy in suits that allege a violation of voting rights secured by the Fourteenth Amendment. We do not reach these questions, however, as it appears that the judgment under review may rest alternately upon a statutory ground of decision.

I

Appellees, black voters of Escambia County, Florida, filed suit in the District Court, alleging that the at-large system for electing the five members of the Board of County Commissioners violated appellees' rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments, the Civil Rights Act of 1957, 42 U. S. C. §1971(a)(1), and the Voting Rights Act, 42 U. S. C. §1973.<sup>1</sup> Appellees contended that the at-large system operated to "dilute" their voting strength. See, e. g., *Rogers v. Lodge*, 458 U. S. 613, 616-617 (1982).

The District Court entered judgment for appellees. That court found that the at-large system used by the County dis-

<sup>1</sup>Defendants named in the suit were Escambia County, the Board of County Commissioners and its individual members, and the County Supervisor of Elections. Only former and present individual members of the Board are now before the Court as appellants. See n. 4, *infra*.

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P. 4

02/16

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

From: **Justice Powell**

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Recirculated: FEB 17 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1295

ESCAMBIA COUNTY, FLORIDA, ET AL. v.  
HENRY T. McMILLAN ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

[February —, 1984]

PER CURIAM.

This appeal presents questions as to the appropriate standards of proof and appropriate remedy in suits that allege a violation of voting rights secured by the Fourteenth Amendment. We do not reach these questions, however, as it appears that the judgment under review may rest alternately upon a statutory ground of decision.

I

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The District Court entered judgment for appellees. That court found that the at-large system used by the County dis-

<sup>1</sup>Defendants named in the suit were Escambia County, the Board of County Commissioners and its individual members, and the County Supervisor of Elections. Only former and present individual members of the Board are now before the Court as appellants. See n. 4, *infra*.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 2, 1984

Re: No. 82-1295 Escambia County v. McMillian

Dear Lewis:

Please join me in your Per Curiam.

Sincerely,

*WRM*

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 1, 1984

Re: 82-1295 - Escambia v. McMillan

Dear Lewis:

Early next week I hope to have in your hands a short opinion setting forth the position I took at Conference.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 23, 1984

Re: 82-1295 - Escambia v. McMillan

Dear Lewis:

After a long struggle I have decided to join your  
per curiam. I apologize for holding you up for so  
long.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 6, 1984

Re: No. 82-1295 Escambia County, Florida, et al. v.  
McMillan et al.

Dear Lewis,

I agree with your proposed per curiam opinion.

Sincerely,

*Sandra*

Justice Powell

Copies to the Conference