The Burger Court Opinion Writing Database

Hoover v. Ronwin

466 U.S. 558 (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

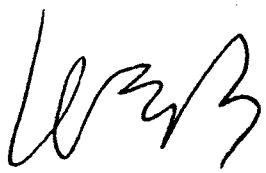
December 8, 1983

MEMORANDUM TO THE CONFERENCE

RE: No. 82-1474 - Hoover v. Ronwin

I wish our record to show that I vote against allowing the Respondent Ronwin to argue this case.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

January 23, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear Lewis:

I have gone into this case more fully since I sent the assignment sheet out last week, and I would appreciate it if you would take over the assignment of the case; in short, the case is reassigned to you.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

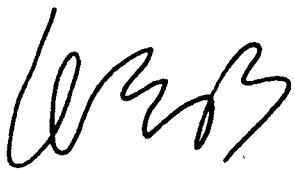
January 23, 1984

Re: 82-1474 - Hoover v. Ronwin

MEMORANDUM TO THE CONFERENCE:

I vote to reverse in this case.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

March 8, 1984

Re: 82-1474 - HOOVER, ET AL. v. RONWIN

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

82-1474

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1984

Dear Lewis:

Thank you for your note on Hoover v. Ronwin, Welsh v. Wisconsin, and Florida. Concerning the last, Mary and I had a wonderful respite, and we trust you and Jo had an equally spendid time.

As far as Ronwin is concerned, the "clerk network" has once again proved to be an imperfect means of communication. Of course I eagerly await your opinion. As you know, the case is a troubling one for me, particularly in view of the risk it presents for bar examiners in general. For now, however, I stand by my vote at Conference. On the other hand, I found John's argument at Conference persuasive, and will probably await the dissent as well before making a final decision.

As for Welsh, I await with keen interest the resolution of your uncertainties. I gather that if your decision is to reverse on the merits, that will provide for the disposition of the case.

Sincerely,

WJB, Jr.

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 23, 1984

No. 82-1474

Hoover v. Ronwin

Dear Lewis,

After reading your admirable effort, I remain still very troubled about this case. I am not sure who is writing the dissent, but I assume there is to be one and in my present unsettled state of mind I think I will wait on the dissent before finally coming to rest.

Sincerely,

Bill

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1984

No. 82-1474

Hoover, et al. v. Ronwin

Dear Lewis,

You and John have certainly given me a lot of trouble in this case. With some misgivings, I finally come down on your side, so please join me.

Sincerely,

Bill

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear Lewis,

I await other writing in this case.

Sincerely,

Byron

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 29, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear John,

Please join me.

Sincerely,

Byrm

Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 5, 1984

Re: No. 82-1474-Hoover v. Ronwin

Dear Lewis:

Please join me.

Sincerely,

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 7, 1984

Re: No. 82-1474 - Hoover v. Ronwin

Dear Lewis:

You have written a good opinion in this case. For now, however, I shall wait to see what John has to say in dissent.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1984

Re: No. 82-1474, Hoover v. Ronwin

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL
'84 MAY -9 A9:52

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

SUPREME COURT
JUSTICE

January 23, 1984

'84 JAN 24 A9:42

82-1474 Hoover v. Ronwin

Dear Chief:

Jan has inquired whether my vote in the above case was to reverse. The answer is "Yes".

My notes show that I voted to reverse, although I recognize the problem resulting from the case being decided on a motion to dismiss.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 3, 1984

82-1474 Hoover v. Ronwin

Dear Bill:

As you have been good enough to lend me your Conference notes on argued cases from time to time, I borrowed - as you know - your notes on this case after the Chief assigned it to me to write.

The "clerk grapevine" - not noted for its reliability - passes the word that you may be giving some thought to reconsidering your vote in this case. As this is a right we all reserve, I only ask that you not make a final judgment until you see what I write.

In view of the importance of the case (as you said at Conference, a decision "the other way" could invite suits in most of the other states by persons who "flunked" the bar exam), I already have done a fair amount of work on my opinion. As your notes prompted me to do, I have reread Goldfarb and Bates, and they convince me more strongly than anything counsel have written or said, that we were right. Harry's disposition of the antitrust question in Bates is right on target as to the presence of "state action".

On a far more pleasant subject, I know that you and Mary are basking in the sunshine of Palm Beach. We hope to be nearby when Jo and I visit the Quesadas at Hobe Sound the latter part of next week. I write now in the event you may return to your Chambers before I have an opportunity to see you.

On another subject, perhaps you have heard that Welch v. Wisconsin has taken another curious turn. Thurgood has withdrawn his recent join in Bill Rehnquist's proposed judgment. If this means that he is returning to agree with your "rule of four" argument, I will take another careful look. As you know, I have not been "at rest" since our last Conference discussion.

* * *

You may recall that Jo and I had an apartment at Delray Beach for many years before we came to Washington, and thought of Florida as our "second home state". We particularly like the small segment of the east coast of Florida from Hobe Sound south including Palm Beach and Delray, to about Boca Raton. It pleases us to think that you and Mary are there. I hope your clerks are not sending you by Federal Express "the paper flow" that never ceases here - though there has been a slowing down.

Sincerely,

Lewis

Justice Brennan

lfp/ss

Not circulated

02/21

To: The Chief Justice 2/22
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[February ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and subject to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee). An Arizona statute recognized the common law authority of the court to determine who should be admitted to practice law in the State. Ariz. Rev. Stat. Ann. § 32-275 (~~1973~~ 1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admission to the Arizona Bar.[1] The Arizona Supreme Court

[1] The procedure in Arizona is not unique to that State. In recent years, the burgeoning number of candidates for admission to practice law and the increased complexity of the subjects that must be tested have combined to make grading and administration of bar examinations a burdensome task. As a result, although the highest court in each state retains ultimate authority for granting or denying admission to the bar, each of those courts has delegated to a subordinate committee responsibility for preparing, grading, and administering the examination. See F. Klein, S. Leleiko, & J. Mavity, Bar Admission Rules and Student Practice Rules,30-33 (1978).

02/21

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

From: **Justice Powell**

FEB 23 1984

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[February ——, 1984]

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[1] The procedure in Arizona is not unique to that State. In recent years, the burgeoning number of candidates for admission to practice law and the increased complexity of the subjects that must be tested have combined to make grading and administration of bar examinations a burdensome task. As a result, although the highest court in each state retains ultimate authority for granting or denying admission to the bar, each of those courts has delegated to a subordinate committee responsibility for preparing, grading, and administering the examination. See F. Klein, S. Leleiko, & J. Mavity, Bar Admission Rules and Student Practice Rules,30–33 (1978).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1984

82-1474 Hoover v. Ronwin

MEMORANDUM TO THE CONFERENCE:

Perhaps not surprisingly, I will reply to John's dissent in this case.

In view of preparation for the Conference, I am not sure when I can get to this. It will be high on my priority list.

L.F.P.

L.F.P., Jr.

ss

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

From: **Justice Powell**

Circulated: _____

Recirculated: APR 5 1984

Stylistic Changes Throughout
pp. 1, 2, 3, 5, 15-20

LFP

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER ET AL., PETITIONERS *v.*
EDWARD RONWIN

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

[April ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and according to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee).[1] An Arizona statute recognized the common law authority of the court to determine who should be admitted to practice law in the State. Ariz. Rev. Stat. Ann. § 32-275 (1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admis-

[1] Although petitioners represent only four of the seven members of the Committee at the time of the February 1974 bar examination, Ronwin named all seven members in his original complaint. Apparently, three of the original defendants to this action did not join, for reasons not apparent, the petition for certiorari in this Court. There is no claim that these members of the Committee failed to participate in or dissented from the actions of the Committee.

relocated foot.

04/12

Stylistic Changes Throughout.

pp. 10, 16, 17, 18, 19, 20, 21, 22

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

From: **Justice Powell**

Circulated: _____

Recirculated: APR 12 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER ET AL., PETITIONERS *v.*
EDWARD RONWIN

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

[April ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and according to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee).[1] An Arizona statute recognized the common law authority of the court to determine who should be admitted to practice law in the State. Ariz. Rev. Stat. Ann. § 32-275 (1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admis-

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pp. 1, 18-20

Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: APR 27 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–1474

CHARLES R. HOOVER ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[April ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and according to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee).[1] The Arizona Constitution vests authority in the court to determine who should be admitted to practice law in the State. *Hunt* v. *Maricopa County Employees Merit System Commission*, 127 Ariz. 259, 261, 619 P. 2d 1036, 1038–1039 (1980); see also Ariz. Rev. Stat. Ann. § 32–275 (1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admission to

[1] Although petitioners represent only four of the seven members of the Committee at the time of the February 1974 bar examination, Ronwin named all seven members in his original complaint. Apparently, three of the original defendants to this action did not join, for reasons not apparent, the petition for certiorari in this Court. There is no claim that these members of the Committee failed to participate in or dissented from the actions of the Committee.

pp. 22-23

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

From: **Justice Powell**

Circulated: _____

Recirculated: MAY 3 1984

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[May ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and according to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee).[1] The Arizona Constitution vests authority in the court to determine who should be admitted to practice law in the State. *Hunt* v. *Maricopa County Employees Merit System Commission*, 127 Ariz. 259, 261, 619 P. 2d 1036, 1038–1039 (1980); see also Ariz. Rev. Stat. Ann. § 32–275 (1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admission to

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 3, 1984

82-1474 Hoover v. Ronwin

Dear John:

Thank you for your letter of May 3.

I will make no response to the note you propose to add on page 11.

Sincerely,

Lewis

Justice Stevens

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: _____

Recirculated: MAY 11 1984

Stylistic Changes Throughout.

pp. 17, 20, 21

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[May 14, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the state action doctrine of immunity from actions under the Sherman Act applies to the grading of bar examinations by the Committee appointed by, and according to, the Rules of the Arizona Supreme Court.

I

Respondent Ronwin was an unsuccessful candidate for admission to the bar of Arizona in 1974. Petitioners were four members of the Arizona Supreme Court's Committee on Examinations and Admissions (Committee).[1] The Arizona Constitution vests authority in the court to determine who should be admitted to practice law in the State. *Hunt* v. *Maricopa County Employees Merit System Commission*, 127 Ariz. 259, 261, 619 P. 2d 1036, 1038–1039 (1980); see also Ariz. Rev. Stat. Ann. § 32–275 (1956). Pursuant to that authority, the Arizona Supreme Court established the Committee to examine and recommend applicants for admission to

[1] Although petitioners represent only four of the seven members of the Committee at the time of the February 1974 bar examination, Ronwin named all seven members in his original complaint. Apparently, three of the original defendants to this action did not join, for reasons not apparent, the petition for certiorari in this Court. There is no claim that these members of the Committee failed to participate in or dissented from the actions of the Committee.

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hoover v. Ronwin, No. 82-1474

Five cases were held for Hoover v. Ronwin:

Town of Hallie v. City of Eau Claire, No. 82-1832: Resp has a monopoly on sewage treatment services in its geographical area. Petrs are 4 towns adjacent to resp that would like to use resp's sewage treatment facilities. Resp allows individual landowners to use its treatment facilites only if they agree to become annexed to resp. Petrs sought injunctive relief, arguing inter alia that resp's policy violated The Sherman Act. The DC dismissed the Sherman Act claim on the ground that resp's conduct was exempt from liability under the Parker v. Brown state action doctrine.

On appeal, the CA7 found that resp was acting pursuant to a clearly articulated and affirmatively expressed state policy of giving cities authority to operate in the area of sewage services and to refuse to provide treatment services. The CA7 assumed from this policy that the State intended to displace competition with regulation. The court rejected petr's contention that the State must "compel" the particular anticompetitive conduct before the state action doctrine applies. Relying on Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982) and City of Lafayette v. Louisiana Power and Light Co., 435 U.S. 389 (1978), the court stated that it did not matter whether the challenged activity was compelled, authorized, or directed, so long as the State intended to displace competition.

The CA7 also rejected petrs' contention that the State must actively supervise the anticompetitive conduct before antitrust immunity could attach. Although the Court in California Liquor Dealers Assn. v. Midcal Aluminum, 445 U.S. 97 (1980), had required "active state supervision," that case had involved private anticompetitive conduct. In Boulder the Court left open the question whether the active supervision requirement applies to municipalities. The CA7 held that no active supervision of local governments is needed.

This case was held on the premise that Hoover v. Ronwin would shed some light on the amount of clear articulation and active supervision necessary for application of Parker v. Brown immunity. As written, Hoover does not reach these issues. Thus, a GVR is not appropriate. The CA7's rejection of a "compulsion" requirement conflicts with the holding of the CA5 in Southern Motor Carriers Rate Conference, Inc., et al. v. United States (see attached hold memo on No. 82-1922). The cases can be

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hoover v. Ronwin, No. 82-1474

Five cases were held for Hoover v. Ronwin:

Southern Motor Carriers Rate Conference, Inc., et al. v. United States, No. 82-1922: At issue in this case are the procedures for setting intrastate trucking rates in approximately 40 states. In these states much of the regulated trucking industry is organized into "motor carrier conferences." Through these conferences member firms develop collective rate proposals for submission to state regulatory agencies. Rate proposals are supervised by the appropriate state regulatory agencies. No state requires that all rates among competing carriers be uniform, or that rates be proposed through conferences. The United States brought this action seeking injunctive relief against the motor carrier conferences in five states. Petrs moved for summary judgment on the grounds that they were immune from Sherman Act liability under the state action and Noerr-Pennington doctrines. The DC rejected petrs' arguments and found a violation of §1 of the Sherman Act.

In a divided en banc opinion, the CA5 affirmed. Relying on Goldfarb v. Virginia State Bar, 421 U.S. 773 (1943), the CA5 held that petrs were not entitled to state action immunity because they had not shown that their conduct was compelled by state law. The CA5 rejected the contention that the only relevant inquiry under California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 455 U.S. 97 (1980) was whether the challenged conduct was pursuant to clearly articulated and affirmatively expressed state policy and actively supervised by the State. The CA5 reasoned that Midcal had not done away with the Goldfarb compulsion requirement. The CA5 also held petrs' conduct to be outside the Noerr-Pennington doctrine because that doctrine does not apply to joint efforts to set prices, as opposed to joint attempts to influence policy. The collective activities here went beyond petitioning for government action. Finally, the CA5 found that the conferences were a per se violation of the Sherman Act.

Our decision in Hoover does not affect the CA5's decision. Because we found that the challenged activity in Hoover was that of the State itself, we did not address the issues of compulsion, articulation, and supervision. Nor did we address the Noerr-Pennington issue.

Although a GVR is inappropriate, I recommend that we grant the petition. The use of motor carrier conferences in 40 states suggests that this case is of considerable importance. The CA5's

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hoover v. Ronwin, No. 82-1474

Five cases were held for Hoover v. Ronwin:

Gold Cross Ambulance v. Kansas City, et al., No. 83-183: Resp Ambulance Service, Inc. is the only company allowed by resp Kansas City to provide ambulance services in K.C. All of the stock of ASI is owned by a municipal trust. Petrs are two ambulance companies that are denied access to most of the K.C. market. They brought suit against resps, alleging violations of state and federal antitrust law. The DC dismissed the antitrust claims.

The CA8 affirmed, finding that the Sherman Act claims were barred under Parker v. Brown. The CA8 found that Missouri had clearly articulated and affirmatively expressed a state policy authorizing K.C. to provide ambulance service to its residents by means of a single provider. Under the relevant state statutes, the State has expressed an intent to displace unregulated competition. The court rejected petrs' contention that the State must "compel" the particular anticompetitive conduct. The court read Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982), as requiring only contemplation or authorization by the State. The CA8 also rejected petrs' contention that there could be no state action because there was no "active state supervision" of K.C.'s conduct. Although this question had been left open in Boulder, requiring active state supervision would make no sense where the conduct in restraint of trade is that of a municipality rather than a private party.

This case was held on the premise that Hoover v. Ronwin would shed some light on the amount of clear articulation and active supervision necessary for application of Parker v. Brown immunity. As written, Hoover does not reach these issues. Thus, a GVR is not appropriate. If the Court decides to grant the petition in Town of Hallie v. City of Eau Claire, No. 82-1832 (see attached hold memo), this case should be held pending the disposition of that case. The facts of the two cases are substantially similar and the "compulsion" and "active state supervision" issues are presented in both. If the petition in Town of Hallie is denied, the petition in this case should be denied as well.

We should await the Court's action on Town of Hallie, No. 82-1832. If it is granted or held, I would hold this case also. Otherwise, I would deny.

L.F.P.

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hoover v. Ronwin, No. 82-1474

Five cases were held for Hoover v. Ronwin:

Title Insurance Rating Bureau of Arizona v. United States, No. 83-154: Petr is a title insurance rating bureau licensed by Arizona. A state statute requires title insurers to file the rates they charge for escrow services. The title insurer is allowed to file its own rates, or, at its option, to have a title insurance rating bureau (such as petr) file rates on its behalf. The statute authorizes, but does not require, cooperative action by title insurance companies in rate making. In 1977, petr filed a rate schedule on behalf of its 13 subscribers, all of whom were engaged in the title insurance business. The effect of the filing was to establish a uniform price charged by the 13 companies for escrow services.

US

Resp brought suit alleging Sherman Act violations. Petr claimed that its actions were exempt from Sherman Act liability under the state action doctrine because the challenged conduct was required by state law. The DC granted resp's motion for summary judgment. The CA9 affirmed. The CA8 held that petr was not entitled to state action immunity because petr had not shown a "clearly articulated and affirmatively expressed state policy to restrict competition" in the title insurance business. Since petr had failed to satisfy the clear articulation and affirmative expression test, the CA9 saw no need to determine whether petr's conduct was actively supervised by the State.

This case was held on the premise that Hoover v. Ronwin would shed some light on the amount of clear articulation and active supervision necessary for application of Parker v. Brown immunity. As written, Hoover does not reach these issues. Thus, a GVR is not appropriate. This case also does not present the "compulsion" issue, as in Southern Motor Carriers, No. 82-1922 (see attached hold memo), or the "active state supervision" issue, as in Town of Hallie, No. 82-1832 (see attached hold memo). I recommend that the petition be denied.

L. F. P.

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Hoover v. Ronwin, No. 82-1474

Five cases were held for Hoover v. Ronwin:

Central Iowa Refuse Systems, Inc. v. Des Moines Metr. Area Solid Waste Agency, et al., No. 83-825: Resp Des Moines and several neighboring municipalities entered into a cooperative venture for the collection of waste. In order to finance a municipal landfill, the municipalities formed resp Solid Waste Agency, issued bonds, and agreed to use the landfill as the exclusive site of solid waste disposal. Petr runs a private landfill. Petr is not allowed to dispose of refuse collected within resp's area in the private landfill. Petr brought this action, arguing that the municipalities' arrangement violated the Sherman Act. The DC dismissed the action and the CA8 affirmed.

The CA8 held that the Iowa legislature had authorized the challenged municipal activity and had intended that muncipalities would displace competition with regulation or some form of monopoly public service. The CA8 also held that there was no need for the municipalities to show "active state supervision" because their conduct is in an area of traditional muncipal activity. Recognizing that the Court left open this question in Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982), the CA8 relied on its decision in Gold Cross Ambulance (see attached hold memo) to find no "active state supervision" requirement.

This case was held on the premise that Hoover v. Ronwin would shed some light on the amount of clear articulation and active supervision necessary for application of Parker v. Brown immunity. As written, Hoover does not reach these issues. Thus, a GVR is not appropriate. If the Court decides to grant the petition in Town of Hallie v. City of Eau Claire, No. 82-1832 (see attached hold memo), this case should be held pending the disposition of that case. The facts of the two cases are substantially similar and the "active state supervision" issue is presented in both.

If the petition in Town of Hallie is granted or held, I would hold this case also. Otherwise, I would deny.

L.F.P.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1984

82-1474 Hoover v. Ronwin

MEMORANDUM TO THE CONFERENCE:

The Reporter has brought to my attention an oversight. In the final flurry of arguments and rebuttals between John and me, I overlooked his changes in what had been n. 16 in a prior draft. This requires the omission of the first three sentences in n. 27 of my opinion.

L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 24, 1984

Re: No. 82-1474 Hoover v. Ronwin

Dear Lewis:

Please note that I am taking no part in the decision of this case.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 23, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear Lewis:

Like you, I do not believe Mr. Ronwin should, or will, win his lawsuit. Unfortunately, however, I cannot subscribe to the analysis in your proposed opinion. I shall therefore try to set forth my views in a dissenting opinion as soon as I can.

Respectfully,

Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

Circulated: MAR 28 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[March ——, 1984]

JUSTICE STEVENS, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

For centuries the common law of restraint of trade has been concerned with restrictions on entry into particular pro-

[1] H. Riley, Memorials of London and London Life in the XIIIth, XIVth, and XVth Centuries 119–120 (1868). The punishment is described in a footnote as "[b]eing drawn on a hurdle through the principal streets of the city." *Id.*, at 119, n. 5.

[2] "The principal reason for the existence of the gild was to preserve to its own members the monopoly of trade. No one not in the gild merchant of the town could buy or sell there except under conditions imposed by the gild. Foreigners coming from other countries or traders from other English towns were prohibited from buying or selling in any way that might interfere with the interest of the gildsmen. They must buy and sell at such times and in such places and only such articles as were provided by the gild regulations." E. Cheyney, An Introduction to the Industrial and Social History of England 52–53 (1920 ed.).

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[March ——, 1984]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

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[2] "The principal reason for the existence of the gild was to preserve to its own members the monopoly of trade. No one not in the gild merchant of the town could buy or sell there except under conditions imposed by the gild. Foreigners coming from other countries or traders from other English towns were prohibited from buying or selling in any way that might interfere with the interest of the gildsmen. They must buy and sell at such times and in such places and only such articles as were provided by the gild regulations." E. Cheyney, An Introduction to the Industrial and Social History of England 52–53 (1920 ed.).

Pp. 7, 8, 10, 11, 15
Stylistic Changes Throughout

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

From: **Justice Stevens**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[April ——, 1984]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

[1] H. Riley, Memorials of London and London Life in the XIIIth, XIVth, and XVth Centuries 119–120 (1868). The punishment is described in a footnote as "[b]eing drawn on a hurdle through the principal streets of the city." *Id.*, at 119, n. 5.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 12, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear Lewis:

In your latest circulation you have added the statement at the end of footnote 33 on page 19 that the Arizona Supreme Court acting in its sovereign capacity "entered the order that denied admission to Ronwin." I have not found any such order in the record and I seriously question whether a State Supreme Court enters a separate order for every person who fails the bar examination. Ronwin's complaint alleges only that the Committee "announced the results of the examination" and the answer admits this allegation and says nothing more that is pertinent. The rules of the Arizona Supreme Court do not call for the entry of such an order. Rather, they state that any "applicant aggrieved by any decision of the Committee" may file a petition for review with the court. Ariz. Sup. Ct. R. 28(c)(XII)(C). Yet the addition to your footnote 30 makes it clear that you are not relying on the Arizona Supreme Court's disposition of Ronwin's petition for review. Hence, I am puzzled by your addition.

In any event, I will make appropriate changes to my dissent, in particular notes 15 and 16 thereof.

Respectfully,

John

Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[April ——, 1984]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

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To: The Chief Justice
Justice Brennan
Justice White
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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[April ——, 1984]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 3, 1984

Re: 82-1474 - Hoover v. Ronwin

Dear Lewis:

The following footnote will be added on page 11 of my dissent:

> "While the majority's disavowal in its note 30 is quite unequivocal, at other points in its opinion, see ante, at 17-18, and in its ultimate statement of its holding, see ante, at 23, it does seem to rely on the denial of respondent's petition for review. If that truly is critical for the majority, then it would follow that an individual in respondent's position who did not file a petition for review would be able to mount an antitrust challenge free from the immunity barrier the majority erects. If it indeed is that easy to escape the majority's holding, then that holding will not protect bar examiners against the parade of horribles discussed by the majority ante, at 21 and n. 34."

Although I surely have no right to the last word, perhaps we are now approaching the end of our momentous battle of footnotes.

Respectfully,

Justice Powell

Copies to the Conference

pp. 10, 11

To: The Chief Justice
Justice Brennan
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Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–1474

CHARLES R. HOOVER, ET AL., PETITIONERS *v.* EDWARD RONWIN

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

[April ——, 1984]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

In 14th century London the bakers' guild regulated the economics of the craft and the quality of its product. In the year 1316, it was adjudged that one Richard D. Lughteburghe "should have the punishment of the hurdle" because he sold certain loaves of bread in London; the bread had been baked in Suthwerke, rather than London, and the loaves were not of "the proper weight."[1] Thus Richard had violated a guild restriction designed to protect the economic interests of the local bakers[2] as well as a restriction designed to protect the public from the purchase of inferior products.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 23, 1984

No. 82-1474 Hoover v. Ronwin

Dear Lewis,

In your final draft in this case, please show that I took no part in the consideration or resolution of the case.

Sincerely,

Sandra

Justice Powell

Copies to the Conference