

# The Burger Court Opinion Writing Database

## *Brown v. Hotel Employees*

468 U.S. 491 (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

April 4, 1984

MEMORANDUM TO THE CONFERENCE:

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel & Restaurant Employees

Two votes are out in this case. I will ask Sandra to try her hand on a "memo" supporting her vote. Anyone else may address a memo to support a contrary vote.

Next month is May!

Regards,

A large, stylized handwritten signature in black ink, appearing to be 'C. B. S.', written over the typed word 'Regards,'.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 5, 1984

No. 83-498) Brown v. Hotel  
          ) & Restaurant  
          ) Employees  
          )  
          ) Danziger v. Hotel  
          ) & Restaurant  
No. 83-573) Employees

---

Dear Chief,

After further reflection, I shall participate in the above case and vote to affirm. I've read Sandra's memo but am still of the view that the controlling precedents require this result.

Sincerely,

*Bill*

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

April 9, 1984

'84 APR -9 12:10

No. 83-498) Brown v. Hotel  
          ) & Restaurant  
          ) Employees  
          )  
          ) Danziger v. Hotel  
          ) & Restaurant  
No. 83-573) Employees

---

Dear Chief,

In light of the vote, now  
apparently 5-4 to affirm, am I to assign  
the opinion for the Court?

Sincerely,

*Bill*

*Conrad*  
*WJB*

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 9, 1984

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel & Restaurant Employees

Dear Byron:

I have your note today. My record shows:

To reverse: O'Connor,  
Rehnquist, Blackmun(?)  
myself.

To affirm: Stevens, Powell,(?)  
Marshall, White,  
Brennan.

If you move to the "pass," or "suspense" columns, the vote is then 4-4 and we will await your decision. One vote each way had a ? mark.

Regards,



Justice White

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

CHAMBERS OF  
THE CHIEF JUSTICE

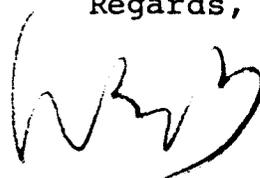
June 19, 1984

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel & Restaurant Employees

Dear Sandra:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. O'Connor', written in a cursive style.

Justice O'Connor

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

June 22, 1984

'84 JUN 25 A9:56

RE: 83-498) - Brown v. Hotel & Restaurant Employees,  
etc.  
83-573) - Danziger v. Hotel and Restaurant  
Employees, etc.

Dear Sandra:

I join.

Regards,



Justice O'Connor

copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE WILLIAM J. BRENNAN, JR.

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

'84 ABR -5 A10:14

April 5, 1984

No. 83-498) Brown v. Hotel  
          ) & Restaurant  
          ) Employees  
          )  
          ) Danziger v. Hotel  
          ) & Restaurant  
No. 83-573) Employees

---

Dear Chief,

After further reflection, I shall participate in the above case and vote to affirm. I've read Sandra's memo but am still of the view that the controlling precedents require this result.

Sincerely,

*All*

The Chief Justice

Copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE DEPARTMENT

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

'84 ABR -9 P2:30

April 9, 1984

No. 83-498) Brown v. Hotel  
          ) & Restaurant  
          ) Employees  
          )  
          ) Danziger v. Hotel  
          ) & Restaurant  
No. 83-573) Employees

---

Dear Chief,

In light of the vote, now  
apparently 5-4 to affirm, am I to assign  
the opinion for the Court?

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 19, 1984

No. 83-498) Brown v. Hotel  
          ) and Restaurant  
          ) Employees, etc.  
          )  
          ) Danziger v. Hotel  
          ) and Restaurant  
No. 83-573) Employees, etc.

---

Dear Chief,

In light of Byron's memo this morning, I assume I may now assign the opinion for the Court in the above?

Sincerely,



The Chief Justice  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 25, 1984

No. 83-498) Brown v. Hotel  
          ) and Restaurant  
          ) Employees, etc.  
          )  
          ) Danziger v. Hotel  
          ) and Restaurant  
No. 83-573) Employees, etc.

---

Dear Chief,

This will confirm that I shall not participate in the decision of the above case.

Sincerely,



The Chief Justice

Copies to the Conference

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

24 JUN -4 AM 30  
June 4, 1984

No. 83-498) Brown v. Hotel  
          ) & Restaurant  
          ) Employees  
          )  
          ) Danziger v. Hotel  
          ) & Restaurant  
No. 83-573) Employees

Dear Sandra:

Since I did sit at the oral argument, would you mind revising the concluding sentence of your opinion to read that "JUSTICE BRENNAN took no part in the decision of these cases"?

Sincerely,



Justice O'Connor

Copies to the Conference

RECEIVED  
APR 11 1984  
U.S. SUPREME COURT  
WASHINGTON, D.C. 20543  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

'84 ABR -9 P3:00

April 9, 1984

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel and Restaurant Employees

---

Dear Chief,

If my vote in these cases makes any critical difference, I  
am not now completely at rest.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 19, 1984

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel & Restaurant Employees

---

Dear Chief,

I voted to affirm at conference and will adhere to that vote. As I see it, the dues-cut-off provision of the New Jersey law is inconsistent with the federal statute.

Sincerely yours,



The Chief Justice  
Copies to the Conference  
cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 5, 1984

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

Re: 83-498 - Brown v. Hotel and Restaurant Employees  
83-573 - Danziger v. Hotel and Restaurant Employees

Dear Sandra,

As I see it, state authority to establish qualifications for union officership is quite a different issue from its power to limit or qualify the right of employees to designate a union as their collective bargaining agent. Your circulation seems to confuse the two issues.

Also, I had thought that the Garmon cases, with their arguably-protected or arguably-prohibited formula and the deeply-rooted-in-local-law exception, had to do with protecting the exclusive jurisdiction of the NLRB. There has been no suggestion until your present circulation that the deeply-rooted concept was meant to qualify settled pre-emption principles and would warrant a local law or regulation that is actually in conflict with federal law or that would frustrate the federal purpose.

I shall be writing separately.

Sincerely,



Justice O'Connor

Copies to the Conference

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

84 JUN 13 P3:35

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

From: Justice White

Circulated: 3 1984

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL.

83-498

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

MARTIN DANZIGER, ETC., ET AL.

83-573

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE WHITE, dissenting.

Section 93(b) of the New Jersey Casino Control Act restricts the activities of unions representing workers employed in the casino industry. In particular, it provides that a union may not collect dues from casino workers or administer pension or welfare funds if any of its officials is disqualified under the criteria set forth in § 86. In its efforts to save some portion of this statute,<sup>1</sup> the Court commits two errors

<sup>1</sup>It is not clear what portion of the statute the Court upholds since it expressly refuses to decide whether the dues prohibition and fund administration provisions are valid. Section 93(b) does nothing more than impose those two restrictions on unions whose officials are disqualified under the criteria set forth in § 86. It does not, by its terms, provide a mechanism for disqualifying any union officer. Therefore, while it appears that the Court holds that a state is free to disqualify certain individuals from acting as union officials as long as it does not impose sanctions on the

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

From: **Justice White**

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ JUN 14 1984

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL.

83-498

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

MARTIN DANZIGER, ETC., ET AL.

83-573

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE WHITE, dissenting.

Section 93(b) of the New Jersey Casino Control Act restricts the activities of unions representing workers employed in the casino industry. In particular, it provides that a union may not collect dues from casino workers or administer pension or welfare funds if any of its officials is disqualified under the criteria set forth in § 86. In its efforts to save some portion of this statute,<sup>1</sup> the Court commits two errors

<sup>1</sup> It is not clear what portion of the statute the Court upholds since it expressly refuses to decide whether the dues prohibition and fund administration provisions are valid. Section 93(b) does nothing more than impose those two restrictions on unions whose officials are disqualified under the criteria set forth in § 86. It does not, by its terms, provide a mechanism for disqualifying any union officer. Therefore, while it appears that the Court holds that a state is free to disqualify certain individuals from acting

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

84 JUN 26 1984 TANTIAALLY REWRITTEN

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

From: Justice White

Circulated: \_\_\_\_\_

Recirculated: JUN 26 1984

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL.

83-498

*v.*

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

MARTIN DANZIGER, ETC., ET AL.

83-573

*v.*

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE WHITE, dissenting.

Section 93(b) of the New Jersey Casino Control Act restricts the activities of unions representing workers employed in the casino industry. In particular, it provides that a union may not collect dues from casino workers or administer pension or welfare funds if any of its officials is disqualified under the criteria set forth in § 86. The Court purports to save some portion of this statute<sup>1</sup> by holding that a state

<sup>1</sup> It is not clear what portion of the statute the Court upholds since it expressly refuses to decide whether the dues prohibition and fund administration provisions are valid. Section 93(b) does nothing more than impose those two restrictions on unions whose officials are disqualified under the criteria set forth in § 86. It does not, by its terms, provide a mechanism for disqualifying any union officer. Therefore, while it appears that the Court holds that a state is free to disqualify certain individuals from acting

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 23, 1984

Re: Nos. 83-498 & 573-Brown v. Hotel and Restaurant  
Employees and Danziger v. Hotel and Restaurant  
Employees

---

Dear Chief:

Confirming my oral announcement, I will not  
participate in the decision of this one.

Sincerely,

*J.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: Nos. 83-498 and 573-Brown and Danziger v.  
Hotel & Restaurant Employees etc.

Dear Sandra:

Please change your opinion to state "Justices  
Brennan and Marshall took no part in the decision  
of these cases."

Sincerely,

*J.M.*

T.M.

Justice O'Connor

cc: The Conference

Supreme Court of the United States

Washington, D. C.

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 25, 1984

74 JUN 25 11:58

Re: No. 83-498) Brown v. Hotel & Restaurant Employees, Etc.  
No. 83-573) Danziger v. Hotel & Restaurant Employees, Etc.

Dear Sandra:

Please join me in your recirculation of June 22.

I must confess that this case, for me, is most bothersome. This is not at all due to your writing or to the structure of the opinion, but is due to the basic fact and legal situation. Your revised approach, I think, is the better one, but, of course, there is much to what Byron has said in his preliminary writings. It was Lewis, I believe, who mentioned at conference that Congress must get into this area.

The situation, for me, is exacerbated by the fact that both Bill and Thurgood have found it necessary to recuse themselves. I recall the difficult six months after Hugo Black's and John Harlan's almost simultaneous retirements, when the Court limped along with only seven members. There were 4-3 decisions during that period and they have always haunted me somewhat. So it is here.

Nevertheless, the case must be decided. Although I am uncomfortable, I am content to join your opinion.

Sincerely,



Justice O'Connor

cc: The Conference

7  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 6, 1984

83-498 Brown v. Hotel & Restaurant Employees  
83-573 Danziger v. Hotel & Restaurant Employees

Dear Sandra:

I have read with interest and admiration your memorandum. It certainly makes the best case that can be made for no preemption.

I am inclined, however, to remain with my tentative vote to affirm. As I said at Conference, I have understood that - in effect - there are two branches to the Garmon preemption doctrine. State regulation is preempted if it prescribes conduct that is "actually or arguably" protected by NLRA. It seems to me that there is an actual conflict between §7 of that Act and §93 of the New Jersey statute.

Chief Justice Stone's reasoning, in his separate opinion in Hill, is on point (the right of employees to bargain collectively through "representative[s] of their own choosing" is the "foundation" of the NLRA).

Your line of reasoning, in light of language in subsequent cases, certainly has merit. I also am reluctant to circumscribe the right of the states to enact legislation that only arguably may be inconsistent. But here, despite the admirable purpose of the New Jersey Act, state and federal law seem to be directly in conflict.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

June 5, 1984

84 JAN -5 P1:10

83-498 Brown v. Hotel and Restaurant Employees

Dear Sanda:

In accord with my vote, I will await what Byron writes.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

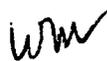
June 7, 1984

Re: No. 83-498) Brown v. Hotel & Restaurant Employees  
83-573) Danziger v. Hotel & Restaurant Employees

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

84 77-1 0000

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 25 AM 1:58

June 25, 1984

Re: Nos. 83-498 & 83-573 Brown v. Hotel & Restaurant  
Employees, etc.

Dear Sandra:

Please join me in your recirculation.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 4, 1984

Re: 83-498 - Brown v. Hotel & Restaurant Employees  
83-573 - Danziger v. Hotel & Restaurant  
Employees

Dear Chief:

With apologies for taking so long, I believe I should report that I have come to the conclusion, not without great reluctance, that the Court's past cases require that the judgment of the Court of Appeals be affirmed. I will, of course, read what Sandra may write with great interest, but thought I should give you my present opinion of what I think the correct disposition is.

Respectfully,



The Chief Justice

Copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL

'84 ABR -9 A11:49

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 9, 1984

Re: 83-498 - Brown v. Hotel & Restaurant  
Employees  
83-573 - Danziger v. Hotel & Restaurant  
Employees

Dear Sandra:

When I circulated my note on April 4 indicating that I had decided to vote to affirm, I did not have the benefit of the memorandum which you circulated later that day. You make a strong case for reversal, but I am still persuaded that our prior cases dictate an affirmance. I would only add these thoughts.

First, New Jersey surely does have a valid interest in exercising broad powers over casino gambling, but I am not persuaded that those interests are more compelling than the interest in avoiding strikes in public utilities that was held to be preempted in Bus Employees v. Wisconsin Employment Relations Board, 340 U.S. 383.

Second, I agree with you that there is tension between Justice Frankfurter's plurality opinion in DeVeau and Justice Black's opinion for the Court in Hill, but the turning point for me in analyzing the DeVeau case is the fact that Bill Brennan refused to make the fifth vote for the view set forth in Frankfurter's opinion and continues to adhere to the position that the actual decision in DeVeau turned on the special history of the interstate compact, rather than on any change in pre-emption law. DeVeau in any event did not purport to overrule Hill, so I think we must continue to respect Hill and find a way to reconcile the two cases. The interstate compact analysis of DeVeau provides that reconciliation.

Third, it is true that §504(a) of the Labor Management Reporting and Disclosure Act makes it clear that employees do not enjoy a completely unfettered right to select the officers of their bargaining representatives but one can

also argue that Congress elected to define the measure of the restriction in that provision and thereby decided to cut back on the pre-existing pre-emptive effect of Hill only to that extent. Surely that provision cannot be read as completely withdrawing all federal protection for the employee's right to elect union officers of their own choosing.

Finally, the more I reflect on the case the more I think it may be a problem for Congress rather than this Court to resolve. We all seem to agree that New Jersey cannot keep associates of hoodlums from serving as fiduciaries on the pension funds under the law that now exists and there may be as much danger of improper activity in that area as in the collective bargaining sphere. In other words, it may be better to give Congress a free shot at the entire problem--which, of course, is not limited to casino gambling but extends into other industries such as the scavenger industry, the linen supply industry, and the transportation industry as well.

I write this response, not for the purpose of trying to persuade you that you have reached the wrong conclusion, but rather to let you know that I have rethought the case in the light of your memorandum. It surely is a close case on which reasonable lawyers can reach different conclusions, but unless Bill Brennan is now prepared to join Justice Frankfurter's opinion in DeVeau, I think I will have to stick with my vote to affirm.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 5, 1984

Re: 83-498 - Brown v. Hotel & Restaurant  
Employees  
83-573 - Danziger v. Hotel & Restaurant  
Employees

Dear Sandra:

Much of your opinion is persuasive but because of my difficulty with the case I will wait to see what Byron writes.

Respectfully,



Justice O'Connor

Copies to the Conference

APR 2 1984  
U.S. SUPREME COURT

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JAN 14 A9:4

June 13, 1984

Re: 83-498 - Brown v. Hotel & Restaurant  
Employees  
83-573 - Danziger v. Hotel & Restaurant  
Employees

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE SANDRA DAY O'CONNOR

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

'84 ABR -5 A10:14

April 4, 1984

Re: No. 83-498) Brown, et al. v. Hotel and Restaurant Employees  
83-573) Danziger, et al. v. Hotel and Restaurant  
Employees

MEMORANDUM TO THE CONFERENCE:

Attached is a memorandum outlining an approach to resolving these cases. I did not attempt to fill in all the details, but it sets out the framework for those who are inclined to think the judgment below should be reversed.

Sincerely,

*Sandra*

MEMORANDUM TO THE CONFERENCE

Nos. 83-498 & 83-573

Brown, et al. v. Hotel and Restaurant Employees, et al.

Danziger, et al. v. Hotel and Restaurant Employees, et al.

By referendum in 1976, the electorate of New Jersey amended its constitution to permit the legislative authorization of casino gambling within the municipality of Atlantic City. In 1977, the state legislature passed the Casino Control Act authorizing the licensing of hotels for casino gambling and establishing a Casino Control Commission with broad regulatory authority over casinos and related industries. Section 93 of this Act requires that every labor organization seeking to represent licensed or registered casino and casino hotel employees must itself register with the Commission annually. Moreover, section 93 also provides that a union would be prohibited from collecting dues from its members if any of its officers or agents are disqualified under section 86 of the Act. Most pertinent to this case, that provision requires disqualification if a union official is found to be a "career offender" or an "associate" of a career offender so as to "create a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations."

This case arose following an investigation of several officers of Local 54 of the Hotel and Restaurant Employees and Bartenders International Union. The union represents those work-

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

84 JUN -4 A9:52

May 31, 1984

No. 83-498 Brown v. Hotel & Rest. Employees  
No. 83-573 Danziger v. Hotel & Rest. Employees

MEMORANDUM TO THE CONFERENCE

Attached is a draft of an opinion in this case. As drafted it is narrower than the memorandum circulated previously; it decides only the issue of whether the NLRA preempts New Jersey's qualification criteria for the union officers. It leaves open on remand the preemption issue on the dues withholding sanction, and it does not address the ERISA preemption question.

Sincerely,

*Sandra*

~~(P. 4, 9, 10, 22, 23)~~

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN -4 A9:52

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor  
JUN 1 1984

Circulated: \_\_\_\_\_

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

*S 00*  
*There are changes upon opinion to state*  
*Justice Brennan and Marshall took*  
*part in the decision of these cases*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL., APPELLANTS  
83-498  
v.  
HOTEL AND RESTAURANT EMPLOYEES  
AND, BARTENDERS INTERNATIONAL  
UNION LOCAL 54 ET AL.

MARTIN DANZIGER, ETC., ET AL., APPELLANTS  
83-573  
v.  
HOTEL AND RESTAURANT EMPLOYEES  
AND BARTENDERS INTERNATIONAL  
UNION LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In 1976, the citizens of New Jersey amended their State Constitution to permit the legislative authorization of casino gambling within the municipality of Atlantic City.<sup>1</sup> Deter-

<sup>1</sup>That amendment provides in part:

"It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, . . . and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the State . . ." N. J. Const., Art. 4, § 7, ¶ 2D.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

RECEIVED  
SUPREME COURT, U  
JUSTICE MARSHA

24 JUN 14 A9

June 13, 1984

No. 83-498 Brown v. Hotel & Restaurant Employees  
No. 83-573 Danziger v. Hotel & Restaurant Employees

Dear Byron,

You make some good points in your dissent and I plan to circulate modifications which will alleviate the criticisms contained in Part I of your dissent, as well as to clarify that my proposal does not rewrite the Supremacy Clause.

Cheers,

*Sandra*

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 22 P2:46

June 22, 1984

Re: No. 83-498) Brown v. Hotel & Restaurant Employees, etc.  
No. 83-573) Danziger v. Hotel & Restaurant Employees,  
etc.

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MEMORANDUM TO THE CONFERENCE

Attached is a revised draft in this case. Part II is rewritten to reflect Byron's view of Garmon. Because we have only a seven-member Court which is divided four to three in this case, I thought it best to bring the opinion much closer to the views expressed by Bryon in his dissent.

Sincerely,

*Sandra*

Pp. 2-3, 8-12, 14,  
16-17, 19-20

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: ~~JUN 22 1984~~

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL.

83-498

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

MARTIN DANZIGER, ETC., ET AL.

83-573

v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In 1976, the citizens of New Jersey amended their State Constitution to permit the legislative authorization of casino gambling within the municipality of Atlantic City.<sup>1</sup> Deter-

<sup>1</sup>That amendment provides in part:

"It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, . . . and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the State . . ." N. J. Const., art. 4, §7, ¶2D.

Stylistic Changes Throughout

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ JUN 29 1984

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

Nos. 83-498 AND 83-573

G. MICHAEL BROWN, ETC., ET AL.

83-498

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v.

HOTEL AND RESTAURANT EMPLOYEES AND BAR-  
TENDERS INTERNATIONAL UNION  
LOCAL 54 ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

[July 2, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In 1976, the citizens of New Jersey amended their State Constitution to permit the legislative authorization of casino gambling within the municipality of Atlantic City.<sup>1</sup> Deter-

<sup>1</sup>That amendment provides in part:

"It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, . . . and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the State . . . ." N. J. Const., Art. 4, § 7, ¶ 2D.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 29, 1984

No. 83-498 Brown v. Hotel & Restaurant Employees  
No. 83-573 Danziger v. Hotel & Restaurant Employees

Dear Chief,

I must attend the funeral of a close friend on Monday morning at 10:00 a.m. and I will not be on the Bench that day. I would appreciate it if you would announce this case for me which is scheduled for announcement that day.

Sincerely,

*Sandra Day*

The Chief Justice

Copies to the Conference