

The Burger Court Opinion Writing Database

Hunter v. Underwood

471 U.S. 222 (1985)

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



6

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1985

Re: No. 84-76 - Hunter v. Underwood

Dear Bill,

I join.

Regards,

WRB

Justice Rehnquist

Copies to the Conference

.84 766 -0 E15 21

203

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 28, 1985

No. 84-76

Hunter v. Underwood

Dear Bill:

Although I agree with virtually all of your opinion in this case and would like to join, I have one difficulty. On page 10, the opinion states:

Appellants contend that §182 should be sustained because it serves the legitimate state interest of denying the franchise to those convicted of crimes involving moral turpitude. The Court of Appeals convincingly demonstrated that such a good government purpose simply was not a motivating factor of the 1901 convention. (emphasis added)

Farther down the page, the opinion states that "the remaining crimes--felonies and moral turpitude misdemeanors--are acceptable bases for denying the franchise." I do not believe that this Court has ever held that a state could disenfranchise those guilty of moral turpitude misdemeanors, nor that there is a legitimate state interest in denying the franchise to those convicted of crimes involving moral turpitude. Richardson v. Ramirez, 418 U.S. 24 (1974), concerned only convicted felons, and the issue of whether a state could disenfranchise misdemeanants may well be one on which we differ. At any rate, your analysis in this case does not rest on the point.

Could you modify the material on page 10 to leave this question open? One way to do this would be to add the words "what they contend to be" before the words "the legitimate state interest" and eliminate the words "good government." Then, in the passage at the bottom of the page, you could add the words "the state contends that" before "the remaining crimes."

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If you could make these changes, or something like them, I would be happy to join.

Sincerely,

Bill

Justice Rehnquist

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APR 29 85 AM 18

200

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 29, 1985

No. 84-76

Hunter v. Underwood

Dear Bill,

Thank you very much for your letter
of March 29. With these changes of
course I join your opinion.

Sincerely,

Justice Rehnquist

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CHAMBERS OF
JUSTICE BYRON R. WHITE

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

April 2, 1985

84-76 - Hunter v. Underwood and Edwards

Dear Bill,

Join me, please.

Sincerely yours,

Justice Rehnquist

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 4, 1985

Re: No. 84-76 - Hunter v. Underwood and Edwards

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1985

APR 01 09 48 AM '85

Re: No. 84-76, Hunter v. Underwood

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 27, 1985

84-76 Hunter v. Underwood

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

APR 28 1985

205

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WHR
Please join me
SM

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

From: **Justice Rehnquist**

Circulated: MAR 27 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-76

NELL HUNTER, ET AL., ETC., APPELLANTS v. VICTOR UNDERWOOD AND CARMEN EDWARDS ETC.

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

[March —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

We are required in this case to decide the constitutionality of Art. VIII § 182 of the Alabama Constitution of 1901, which provides for the disenfranchisement of persons convicted of, among other offenses, "any crime . . . involving moral turpitude."* Appellees Carmen Edwards, a black, and Victor Underwood, a white, have been blocked from the voter rolls pursuant to § 182 by the boards of registrars for Montgomery

*Section 182 of the Alabama Constitution of 1901 provides:

"The following persons shall be disqualified both from registering, and from voting, namely:

"All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector."

WHR
12/17

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 29, 1985

Re: No. 84-76 Hunter v. Underwood

Dear Bill and John,

I propose to revise the presently circulating draft to conform to your suggestions in the following manner:

Modify the first sentence in the first full paragraph on page 10 to read: "Appellants contend that the state has a legitimate interest in denying the franchise to those convicted of crimes involving moral turpitude, and that §182 should be sustained on that ground." I will then delete the words "good government" from the following sentence.

I will modify the first two sentences in the paragraph beginning toward the bottom of page 10 to read: "At oral argument in this Court, the State suggested that, regardless of the original purpose of §182, events occurring in the succeeding eighty years had legitimated the provision. Some of the more blatantly discriminatory categories, such as assault and battery on the wife and miscegenation, have been struck down by the courts, and the State contends that the remaining crimes -- felonies and moral turpitude misdemeanors -- are acceptable bases for denying the franchise."

Sincerely,

WM

Justice Brennan
Justice Stevens

cc: The Conference

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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

Circulated: _____
Recirculated: 4/1/85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-76

NELL HUNTER, ET AL., ETC., APPELLANTS v. VICTOR UNDERWOOD AND CARMEN EDWARDS ETC.

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

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

We are required in this case to decide the constitutionality of Art. VIII, §182, of the Alabama Constitution of 1901, which provides for the disenfranchisement of persons convicted of, among other offenses, "any crime . . . involving moral turpitude."* Appellees Carmen Edwards, a black, and Victor Underwood, a white, have been blocked from the voter rolls pursuant to § 182 by the boards of registrars for

*Section 182 of the Alabama Constitution of 1901 provides:

"The following persons shall be disqualified both from registering, and from voting, namely:

"All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 27, 1985

Re: No. 84-76, Hunter v. Underwood

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

March 27, 1985

No. 84-76 Hunter v. Underwood and Edwards

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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ES:GA 85 MAR 48

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