

In the

Supreme Court of the United States

DOUGHERTY COUNTY, GEORGIA, )  
BOARD OF EDUCATION, et al., )

Appellants, )

v. )

JOHN WHITE, )

Appellee. )

No. 77-120

Washington, D. C.  
October 2 & 3, 1978

Pages 1 thru 59

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DOUGHERTY COUNTY, GEORGIA, :  
BOARD OF EDUCATION, ET AL., :  
Appellants, :  
v. : No. 77-120  
JOHN WHITE, :  
Appellee. :  
- - - - - X

Washington, D. C.  
Monday, October 2, 1978

The above-entitled matter came on for argument at  
2:45 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM BRENNAN, Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice  
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

JESSE W. WALTERS, ESQ., Perry, Walters, Lippitt &  
Custer, 409 North Jackson Street, Post Office Box  
527, Albany, Georgia 31702, on behalf of the  
Appellants.

JOHN R. MYER, ESQ., 1515 Healey Building, 57  
Forsyth Street, N.W., Atlanta, Georgia 30303,  
on behalf of the Appellee.

LAWRENCE G. WALLACE, ESQ., Office of the Solicitor  
General, Department of Justice, Washington, D.C.  
20530, as amicus curiae.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 77-120, Dougherty County, Georgia, Board of Education against White.

Mr. Walters, you may proceed.

ORAL ARGUMENT OF JESSE W. WALTERS, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. WALTERS: Mr. Chief Justice, and may it please the Court:

This case comes to this Court from a three-judge district court in the Middle District of Georgia and involves a claim that a certain, what we submit, personnel rule of the Dougherty County Board of Education was not adopted in conformity with the Voting Rights Act of 1965, and therefore was illegally applied to John White, the Plaintiff in the case below.

The Voting Rights Act of 1965 was designed, as this Court knows, to eliminate racial discrimination in voting which had been practiced principally in some Southern States. So far as we believe is material to this case before this Court, Section 5 of that Act provides substantially that whenever a State or political subdivision shall enact or seek to administer any voting qualification or prerequisite to voting or standard practice or procedure with respect to voting different from that in force and effect on November 1,



1964, such change shall not be utilized or implemented until either a judicial determination has been secured in the United States District Court for the District of Columbia, that the change does not have the purpose or effect of denying the right to vote on account of race, or such change has been submitted to the Attorney General of the United States and he has interposed no objection thereto within 60 days.

We think it material that, as defined in the Act, the term "political subdivision" means any county or parish except that where registration for voting is not conducted under the supervision of a county or parish; The term shall include any other subdivision of a state which conducts registration for voting.

In May of 1972, John White, a twelve-month per year employee of the Dougherty County Board of Education, made known to the Board of Education his intention to offer for and qualify for election to the Georgia House of Representatives. The Dougherty County Board of Education had no policy in connection with its employees entering the political arena and continuing in that employment. Rule 58 was therefore adopted by the Dougherty County Board of Education and it provided substantially that any employee who became a candidate or elected for political office would be required to take a leave of absence, without pay, effective upon qualifying for election to such office, continuing for the duration of the candidacy

and during the period of service if elected.

QUESTION: When was this rule adopted, chronologically, vis-a-vis the Board's becoming aware that Mr. White intended becoming a candidate?

MR. WALTERS: Mr. Justice Stewart, chronologically, Mr. White made known his intentions to qualify or to run for the Georgia House of Representatives. Thereafter, the Board of Education adopted Rule 58.

QUESTION: Immediately thereafter was the rule adopted?

MR. WALTERS: Within a very short period of time, yes, Your Honor.

And after the adoption of the rule, Mr. White then did, in fact, qualify for election.

QUESTION: Had they ever had any experience of this kind before?

MR. WALTERS: To the knowledge, Mr. Chief Justice, of the members of the Board at that time, no employee had ever run for public office, or qualified to run for public office prior to this time.

This rule was not submitted or cleared through the District Court of the District of Columbia or through the Attorney General simply and concisely because it was not felt that it was a rule that they thought fell within the provisions of the Voting Rights Act of 1965.

Shortly after the adoption of Rule 58, Mr. White qualified for election to the Georgia House of Representatives. He was granted a leave of absence and was unsuccessful in the Democratic Primary held in August of 1972 and was promptly thereafter returned to a duty status with pay.

Two years later, Mr. White again qualified for election to the Georgia House of Representatives. He again was granted a leave of absence without pay. This time Mr. White was successful. He was successful in the Democratic Primary in August, successful in the general election in November and was returned to a duty status on the 1st of December 1974.

QUESTION: Was he on duty status while he was serving in the Legislature?

MR. WALTERS: Mr. Justice Blackmun, I do not believe anywhere in the record that this is made explicitly clear. I will state for the Court that Mr. White was on a leave of absence, without pay, during the time that he actually was serving in the Legislature. The rule as originally written provided that he would be granted a leave of absence without pay during the time to which elected. After election he came before the Board. This is not in the record I hasten to say. The Board modified the rule so as to not to make it effective for the entire two years but just during the time that he was away in the Legislature.

Mr. White again, in 1976, qualified for reelection to the Georgia House of Representatives. He again was granted a leave of absence on qualification and shortly thereafter this suit was instituted by Mr. White seeking, among other things, to have Rule 58 declared in violation of the Voting Rights Act of 1965, with the view of compelling the Board to reimburse him for the pay that he had contended that he lost while on leave of absence.

Three-judge court was convened, both parties filed motions for partially summary judgment and this three-judge court, hearing him out on record and briefs, held that Rule 58 was, in fact, covered by the Voting Rights Act -- Section 5 of the Voting Rights Act of 1965, and it is this decision that brings this case to this Court.

We submit that two questions are submitted to this Court by the Dougherty County Board of Education. First, is the Dougherty County Board of Education a political subdivision, as defined in the Act, or as established under the decisions of this Court, so as to be coupled under Section 5 of the Act?

Second, is Rule 58 a voting qualification or prerequisite to voting or standard practice or procedure with respect to voting?

It is necessary that both of these questions be answered in the affirmative in order for the decision of the



District Court to be correct. And it is submitted that the answer to both is in the negative.

With respect to the first question, a political subdivision is defined in the Act as any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

The Dougherty County Board of Education is not a county or a parish, nor does it conduct registration for voting. And clearly, it does not fit the definition of a political subdivision as that term is defined in the Act.

Now, admittedly, the Act applies specifically to the State of Georgia, but this does not mean, we submit, that it automatically applies to the Dougherty County Board of Education, even though that Board is a public body or a political subdivision, not exclusively that, but it is known as a political subdivision.

The Dougherty County Board of Education is a creature or a political subdivision of the State. It is charged with the responsibility and duty of operating the public schools of Dougherty County, nothing more and nothing less.

QUESTION: It is charged with running the schools under the State and under the laws of the State; am I correct?

MR. WALTERS: Yes, that is absolutely correct.

QUESTION: And pursuant to the laws of the State and the State Superintendent of Schools?

MR. WALTERS: It is certainly charged with the responsibility under the laws of the State, Mr. Justice Marshall, but I doubt very seriously that the pronouncements of the State School Superintendent have the effect of laws on the Board of Education of Dougherty County, Georgia.

QUESTION: So, they just run it under the State law?

MR. WALTERS: Yes, sir.

It has --

QUESTION: Mr. Walters, what about the case involving the City of Sheffield?

MR. WALTERS: I think I am going to come to that in just a moment.

QUESTION: Everything you have said so far applies equally to that.

MR. WALTERS: I understand, Mr. Justice Stevens, and, with your permission, I will --

The Dougherty County Board of Education has no responsibilities or duties in connection with elections, cannot change the location of a polling place, adopt at-large systems of elections, provide for the appointment of previously elected officials. As a matter of fact, the members

of the Dougherty County Board of Education are appointed officials and any change in the method of their selection must come from the State of Georgia.

The Board cannot enact laws regulating candidacy, voting procedures, annexations, reapportionment, redistricting or otherwise legislate with respect to any feature of the electoral processes.

Congress did not intend for the Voting Rights Act to apply to a political subdivision that had absolutely no function relating to voting in elections. Every decision that I have been able to find involving the Voting Rights Act of 1965 involves a political entity that has powers and responsibilities with respect to the election processes. There must be this, we say and submit to this Court, for the Voting Rights Act to apply to a political subdivision. And this must be real responsibility, real duty, real power, not imaginery or fanciful.

Now, the case of the United States v. Board of Commissioners of Sheffield, Alabama, does in fact hold that a political subdivision does not have to register voters to become a covered political subdivision, under Section 5.

We submit, though, that it is essential to the understanding of Sheffield to look at its factual situation. The City of Sheffield, Alabama, on November 1, 1964, was governed by three commissioners elected by the city at large.

Sometime during the year 1975, Sheffield determined to submit a referendum to the people of the city to see if they desired to change the form of government to a mayor-council form, consisting of a mayor and eight councilmen, the eight councilmen elected at-large.

Now, bear in mind here that the City of Sheffield had the complete responsibility, the complete power in connection with this election, even though they did not register voters.

The referendum was submitted, was passed and the City of Sheffield called an election to implement the new form of government and to elect the new officials. The United States filed suit contending that this was a change that should have been either cleared through the District Court of the District of Columbia or the Attorney General of the United States and asking an injunction. The three-judge court dismissed the proceeding, finding unanimously that the City of Sheffield was not a political subdivision as defined in the Act.

MR. CHIEF JUSTICE BURGER: We will resume there at 10:00 in the morning, Counsel. Thank you.

(Whereupon at 3:00 o'clock, p.m., the Court adjourned to reconvene Tuesday, October 3, 1978, at 10:00 o'clock, a.m.)