



10-1979

Supreme Court of Virginia v. Consumers Union of the United States, Inc.

Lewis F. Powell Jr.

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OUT

PRELIMINARY MEMORANDUM

October 12, 1979 Conf.
List 1, Sheet 1

No. 79-198

Appeal to DC ED VA. (Merhige,
Bryan [CJ]) (Warringer,
concurring and dissenting)

Supreme Court of VA.

v.

Consumers Union of U.S.,
Inc.

Federal/Civil

Timely

Please see Preliminary Memorandum in No. 79-185 -
Consumers Union of United States, Inc. v. Va. State Bar.

10/2/79

Sallet

op.in j.s.

SUPREME COURT OF VIRGINIA

vs.

CONSUMERS UNION OF UNITED STATES, INC.

Also motion to dismiss or affirm. YOU ARE OUT OF THIS CASE Va 3/ct

1. I am out because the appellants included Va 3/ct and Chief Justice. I know personally all justices, & I know is close friend. My son, Lewis III, was her clerk for Judge Merhige, the fed. judge who decided this case below. h-7.P.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.				Join 3									
Brennan, J.				✓									
Stewart, J.								✓					
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.				✓									
Powell, J.													
Rehnquist, J.				✓									
Stevens, J.				✓	(or Postpone)								

MEMORANDUM

To: Mr. Justice Powell

18 February 1980

From: Gregory May

No. 79-198: Supreme Court of Virginia v. Consumers Union

The three-judge court did basically two things. First, it enjoined all defendants (Virginia State Bar, Howard Dobbins, Rothwell Lillard, The Supreme Court of Virginia, and The Hon. Lawrence I'Anson, individually and in his official capacity) from enforcing the disciplinary rule. Second, it awarded costs and attorneys' fees against The Supreme Court of Virginia and The Hon. Lawrence I'Anson in his official capacity and it refused to award costs and fees against the Virginia State Bar.

The notice of appeal in No. 79-198 is by "The Supreme Court of Virginia and the Honorable Lawrence W. I'Anson, individually, and in his official capacity as Chief Justice." But the only liability contested, of course, is that against the Court and The Chief Justice in his official capacity. In fact,

the appellee argued in its response that The Chief Justice's appeal in his individual capacity should be dismissed.

The appellee has cross-appealed in No. 79-185, which is being held for the decision on the appeal. We do not have the papers on the cross-appeal in chambers, but it appears from the preliminary memo that the only issue is whether the Virginia State Bar ought to be liable for costs and attorneys' fees. Since you are a member of the Virginia State Bar, you would be out of the cross-appeal.



RECEIVED

FEB 23 1980

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MARSHALL COLEMAN
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
1101 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
804-786-2071

February 21, 1980

Mr. Michael Rodak, Jr.
Clerk
The Supreme Court of the United States
One First Street, N.E.
Washington, D. C. 20543

Re: Supreme Court of Virginia, et al. v. Consumers Union
of the United States, Inc., et al.
No. 79-198

Dear Mr. Rodak:

In the course of oral argument in the above cause, Mr. Justice Rhenquist inquired whether The Supreme Court had pled that it was not a person within the meaning of 42 U.S.C. § 1983. This letter is to bring to the Court's attention facts not addressed in counsel's answer to the question. Ten copies are enclosed. I would appreciate your bringing this to the Court's attention.

"Plaintiffs' Proposed Findings of Fact and Conclusions of Law," dated May 13, 1976, filed May 14, 1976, stated at page 14, that jurisdiction was laid under 28 U.S.C. § 1343(3), and "The State Bar, as well as the individual defendants, are subject to liability under 42 U.S.C. § 1983."

The "Proposed Findings of Fact and Conclusions of Law," dated and filed on May 13, 1976, on behalf of the "State defendants," pled at page 6, "The Supreme Court of Virginia is not a person within the purview of 42 U.S.C. § 1983. Erdmann v. Stevens, 458 F.2d 1207 (2d Cir. 1972), cert. den., 409 U.S. 889 (1972)."

Sincerely yours,

Marshall Coleman

Marshall Coleman
Attorney General

Mr. Michael Rodak, Jr.
Page two
February 21, 1980

cc: Ms. Ellen Broadman
Mr. Philip B. Kurland
The Honorable Daniel R. McLeod
Mr. Burt Neuborne

Enclosures

April 30, 1980

79-198 Supreme Court of Virginia v. Consumers Union

Dear Byron:

Please show on the next draft of your memorandum that I took no part in the consideration or decision of this case.

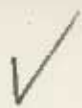
Sincerely,

Mr. Justice White

lfp/ss

cc: The Conference

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



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1980

Re: No. 79-198 - Supreme Court of Virginia v.
Consumers Union of the United States

Dear Byron:

Although I do not claim to have fully digested your memorandum of April 30th in this case, I have read it and find myself in substantial agreement with it. As of now, should it become an opinion of the Court, I would join it.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

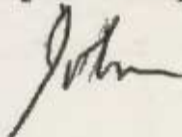
✓
May 6, 1980

Re: 79-198 - Supreme Court of Virginia v.
Consumers Union of the United States

Dear Byron:

Subject to possible reconsideration in the light of what others may write, I find myself at the moment persuaded by your memorandum.

Respectfully,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1980

Re: No. 79-198 - Supreme Court of Virginia, et al.
v. Consumers Union of the United States, et al.

Dear Byron:

As of now - I am with you.

Sincerely,

T.M.
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1980

Re: No. 79-198 Supreme Court of Virginia v. Consumers
Union of the United States

Dear Byron:

Please join me.

Sincerely,
WHR

Mr. Justice White

Copies to the Conference

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

4

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 23, 1980

Re: 79-198 - Supreme Court of Virginia
v. Consumers Union of the United States

Dear Byron:

Please join me.

Respectfully,

Jh

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1980

Re: No. 79-198 - Supreme Court of Virginia
v. Consumers Union

Dear Byron:

I go along, and you may join me. I shall be interested in your recommendation with respect to the "held" case, No. 79-185, Consumers Union v. Virginia State Bar.

Sincerely,

Harry
—

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1980

Re: No. 79-198 - Supreme Court of Virginia
v. Consumers Union

Dear Byron:

I go along, and you may join me. I shall be interested in your recommendation with respect to the "held" case, No. 79-185, Consumers Union v. Virginia State Bar.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

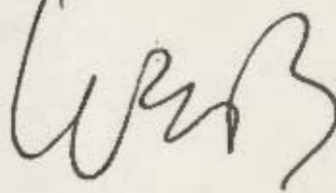
May 27, 1980

RE: 79-198 - Supreme Court of Virginia
v. Consumers Union of the U.S., Inc.

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

