

The Burger Court Opinion Writing Database

Tilton v. Richardson

403 U.S. 672 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: The Chief Justice

Circulated: MAY 6 1971

Recirculated: _____

No. 153 - Tilton v. Richardson

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This appeal presents questions as to federal aid to church-related colleges and universities under Title I. of the Higher Education Facilities Act of 1963, 20 U.S.C. §§ 701-58, which provides construction grants for buildings and facilities used exclusively for secular educational purposes. We must determine first whether the Act authorizes aid to such church-related institutions, and if so, whether the Act violates either the Establishment or Free Exercise Clauses of the First Amendment.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 3, 1971

Re: No. 153 - Tilton v. Richardson

MEMORANDUM TO THE CONFERENCE:

Enclosed is a revised opinion in the above. It may not be imperative to strike the "20-year clause" to save the statute but it rather clearly saves it for me.

Regards,



3,4,5,9-11,12,13,14,15

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: The Chief Justice

Printed
SUPREME COURT OF THE UNITED STATES

Recirculated: JUN 4 1971

No. 153.—OCTOBER TERM, 1970

Eleanor Taft Tilton et al.,
Appellants,
v.
Elliot L. Richardson, Secretary
of the United States Depart-
ment of Health, Education,
and Welfare, et al.

On Appeal From the
United States District
Court for the District
of Connecticut.

[June —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of
the Court.

This appeal presents questions as to federal aid to church-related colleges and universities under Title I of the Higher Education Facilities Act of 1963, 20 U. S. C. §§ 701-758, which provides construction grants for buildings and facilities used exclusively for secular educational purposes. We must determine first whether the Act authorizes aid to such church-related institutions, and if so, whether the Act violates either the Establishment or Free Exercise Clauses of the First Amendment.

I

The Higher Education Facilities Act was passed in 1963 in response to a strong nationwide demand for the expansion of college and university facilities to meet the sharply rising number of young people demanding higher education. The Act authorizes federal grants and loans to "institutions of higher education" for the

1,3,5,6,9,14,16

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 153.—OCTOBER TERM, 1970

Recirculated: JUN 16 1971

Eleanor Taft Tilton et al.,
Appellants,
v.
Elliot L. Richardson, Secretary
of the United States Department
of Health, Education,
and Welfare, et al.

On Appeal From the
United States District
Court for the District
of Connecticut.

[June —, 1971]

MR. CHIEF JUSTICE BURGER announced the judgment of the Court and an opinion in which MR. JUSTICE HARLAN and MR. JUSTICE STEWART join.

This appeal presents important constitutional questions as to federal aid for church-related colleges and universities under Title I of the Higher Education Facilities Act of 1963, 20 U. S. C. §§ 701-758, which provides construction grants for buildings and facilities used exclusively for secular educational purposes. We must determine first whether the Act authorizes aid to such church-related institutions, and if so, whether the Act violates either the Establishment or Free Exercise Clauses of the First Amendment.

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 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES, J.

No. 153.—OCTOBER TERM, 1970

Eleanor Taft Tilton et al.,
 Appellants,
 v.
 Elliot L. Richardson, Secretary of the United States Department of Health, Education, and Welfare, et al.

On Appeal From the United States District Court for the District of Connecticut.

[May —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

The correct constitutional principle for this case was stated by President Kennedy in 1961 when questioned as to his policy respecting aid to private and parochial schools:¹

“... the Constitution clearly prohibits aid to the school, to parochial schools. I don’t think there is any doubt of that.

“The Everson case, which is probably the most celebrated case, provided only by a 5 to 4 decision was it possible for a local community to provide bus rides to nonpublic school children. But all through the majority and minority statements on that particular question there was a very clear prohibition against aid to the school direct. The Supreme Court made its decision in the Everson case by determining that the aid was to the child, not to the school. Aid to the school is—there isn’t any room for debate on

¹ Public Papers of the Presidents 1961, pp. 142–143, Press Conference March 4, 1961.

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/ J
To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 153.—OCTOBER TERM, 1970

From: Douglas, J.

Circulated: _____

Recirculated: 5/11/71

Eleanor Taft Tilton et al.,
Appellants,

v.
Elliot L. Richardson, Secretary of the United States Department of Health, Education, and Welfare, et al.

On Appeal From the United States District Court for the District of Connecticut.

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To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
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 Mr. Justice Blackmun

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 153.—OCTOBER TERM, 1970 From: Douglas, J.

Eleanor Taft Tilton et al.,
 Appellants,
 v.
 Elliot L. Richardson, Secretary of the United States
 Department of Health, Education, and Welfare,
 et al.

Circulated:

Recirculated:

On Appeal From the United States District Court for the District of Connecticut.

[May —, 1971]

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P. 1
8th DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 153.—OCTOBER TERM, 1970

Eleanor Taft Tilton et al.,
Appellants,

v.
Elliot L. Richardson, Secretary of the United States Department of Health, Education, and Welfare, et al.

On Appeal From the United States District Court for the District of Connecticut.

5/25/71

[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

The correct constitutional principle for this case was stated by President Kennedy in 1961 when questioned as to his policy respecting aid to private and parochial schools:¹

“... the Constitution clearly prohibits aid to the school, to parochial schools. I don’t think there is any doubt of that.

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 To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
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9th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 153.—OCTOBER TERM, 1970

Eleanor Taft Tilton et al.,
 Appellants,

v.

Elliot L. Richardson, Secretary
 of the United States Department
 of Health, Education,
 and Welfare, et al.

On Appeal From the
 United States District
 Court for the District
 of Connecticut.

6/8/71

[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

The correct constitutional principle for this case was stated by President Kennedy in 1961 when questioned as to his policy respecting aid to private and parochial schools:¹

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

10th DRAFT

SUPREME COURT OF THE UNITED STATES From: Douglas, J.

No. 153.—OCTOBER TERM, 1970 Circulated:

Eleanor Taft Tilton et al.,
Appellants,
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[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
and MR. JUSTICE MARSHALL concur, dissenting.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

11th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 153.—OCTOBER TERM, 1970

Eleanor Taft Tilton et al.,
Appellants,
v.
Elliot L. Richardson, Secretary
of the United States Depart-
ment of Health, Education,
and Welfare, et al.

On Appeal From the
United States District
Court for the District
of Connecticut.

6/16/71

[June —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
and MR. JUSTICE MARSHALL concur, dissenting.

The correct constitutional principle for this case was stated by President Kennedy in 1961 when questioned as to his policy respecting aid to private and parochial schools:¹

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

June 7, 1971

Re: Nos. 153, 89, 569 and 570 - Parochial
Aid Cases

Dear Chief:

You have convinced me -- contrary to my initial view -- that tenable distinctions do exist between the federal case and the three state cases, and I am glad to join your opinion in each case.

If end-of-Term pressures permit, I may write something in addition, but if I do it will be of a tenor that will not qualify in any way my joinder of your opinions.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

WD
TM

March 8, 1971

Dear Chief:

I hope that in this instance you will conclude that I would not be a good choice to attempt an opinion for the Court. There is the obvious reason but also the reason that I count on the opposing views of others when written out to help me make up my mind.

Sincerely,

WB

The Chief Justice

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

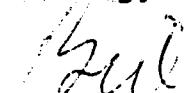
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 8, 1971

Dear Chief:

I have decided to record tentative votes
to Affirm in Nos. 153 and 89 and to Reverse
in Nos. 569 and 570. I emphasize that the
votes are tentative depending upon what is
written pro and con.

Sincerely,


W.J.B. Jr.

The Chief Justice

cc:The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1971

Re: No. 153, Tilton v. Richardson

Dear Chief,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

C.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1971

No. 153 - Tilton v. Richardson

Dear Chief,

I am glad to join your amended
opinion circulated today.

Sincerely yours,

PS.
P

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1971

Re: No. 153 - Tilton v. Richardson

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

June 9, 1971

Re: No. 153 - Tilton v. Richardson

Dear Chief:

In your proposed opinion for this case, have you purposely refrained from any reference to Bradfield v. Roberts, 175 U. S. 291 (1899)? I realize this is an old case, but it comes close. You may recall that it was not cited in the Government's brief and that when I asked Mr. Friedman about this omission, he replied that it was a sheer oversight.

Sincerely,

H. A. B.

The Chief Justice

June 16, 1971

Re: No. 153 - Tilton, et al. v. Richardson

Dear Chief:

Please join me in your recirculation
of June 16.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference