

The Burger Court Opinion Writing Database

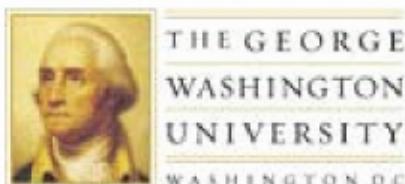
Ely v. Klahr

403 U.S. 108 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1971

No. 548 - Ely v. Klahr

Dear Byron:

Please join me.

Regards,

WB3

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 13, 1971

Dear Bill,

Re: No. 548 - Ely v. Klahr

Please join me in your concurrence.

Since rely,

Hugo
Hugo

Mr. Justice Douglas

cc: Members of the Conference

WD

4/8/71

LAP

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 548.—OCTOBER TERM, 1970

Herbert L. Ely, Individually and
as Chairman of the Demo- } On Appeal From the
cratic Party of Arizona, } United States Dis-
Appellant, } trict Court for the
v. } District of Arizona.
Gary Peter Klahr et al.

[April —, 1971]

MR. JUSTICE DOUGLAS, concurring.

The complaint in this case was filed on April 27, 1964. The District Court stayed all proceedings on June 25, 1964, until after the next regular session of the legislature and, when nothing was achieved, stayed them again until after a special session. A reapportionment plan produced by that legislature was held unconstitutional. 250 F. Supp. 537.

Thereupon the District Court drew a "temporary and provisional" plan for the general elections of 1966 and 1968. See 254 F. Supp. 997; 289 F. Supp. 827; 303 F. Supp. 224. In 1967 the legislature produced another plan which was approved by the voters and became effective January 17, 1969. This plan was also declared unconstitutional by the District Court on July 22, 1969. The legislature then adopted a new plan effective January 22, 1970. The District Court allowed this plan to be used for the 1970 general election, though it considered the plan to be unconstitutional. The District Court in its decree provided:

"The court, having been advised that detailed population figures for the State of Arizona will be available from the official 1970 census by the summer of 1971, assumes that the Arizona Legislature will by November 1, 1971, enact a valid plan of reapportionment for both houses of the Arizona Leg-

WJD

File

Rec'd

5/13/71

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 548.—OCTOBER TERM, 1970

Herbert L. Ely, Individually and
as Chairman of the Demo-
cratic Party of Arizona,
Appellant,
v.
Gary Peter Klahr et al.

On Appeal From the
United States Dis-
trict Court for the
District of Arizona.

[May —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
joins, concurring.

The complaint in this case was filed on April 27, 1964. The District Court stayed all proceedings on June 25, 1964, until after the next regular session of the legislature and, when nothing was achieved, stayed them again until after a special session. A reapportionment plan produced by that legislature was held unconstitutional. 250 F. Supp. 537.

Thereupon the District Court drew a "temporary and provisional" plan for the general elections of 1966 and 1968. See 254 F. Supp. 997; 289 F. Supp. 827; 303 F. Supp. 224. In 1967 the legislature produced another plan which was approved by the voters and became effective January 17, 1969. This plan was also declared unconstitutional by the District Court on July 22, 1969. The legislature then adopted a new plan effective January 22, 1970. The District Court allowed this plan to be used for the 1970 general election, though it considered the plan to be unconstitutional. The District Court in its decree provided:

"The court, having been advised that detailed population figures for the State of Arizona will be available from the official 1970 census by the summer of 1971, assumes that the Arizona Legislature will by November 1, 1971, enact a valid plan of reapportionment for both houses of the Arizona Leg-

Mr. — J. M. —
Chase
V. J.

5th 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. 548.—OCTOBER TERM, 1970

From: Douglas, J.

Herbert L. Ely, Individually and
as Chairman of the Demo-
cratic Party of Arizona,
Appellant,
v.
Gary Peter Klahr et al.

Circulated:

On Appeal From the United States Dis-
trict Court for the District of Arizona.

6/3/71

[June 7, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK joins, concurring.

The complaint in this case was filed on April 27, 1964. The District Court stayed all proceedings on June 25, 1964, until after the next regular session of the legislature and, when nothing was achieved, stayed them again until after a special session. A reapportionment plan produced by that legislature was held unconstitutional. 250 F. Supp. 537.

Thereupon the District Court drew a "temporary and provisional" plan for the general elections of 1966 and 1968. See 254 F. Supp. 997; 289 F. Supp. 827; 303 F. Supp. 224. In 1967 the legislature produced another plan which was approved by the voters and became effective January 17, 1969. This plan was also declared unconstitutional by the District Court on July 22, 1969. The legislature then adopted a new plan effective January 22, 1970. The District Court allowed this plan to be used for the 1970 general election, although it considered the plan to be unconstitutional. The District Court in its decree provided:

"The court, having been advised that detailed population figures for the State of Arizona will be available from the official 1970 census by the summer of 1971, assumes that the Arizona Legislature will by November 1, 1971, enact a valid plan of reapportionment for both houses of the Arizona Leg-

May 26 1971

No. 549 - May V. Kester

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Would you please add to the list of **ART**

MR. JUSTICE HARLAN concurred in the result upon the premise set forth in his separate opinion in *Anderson v. Gandy*, 269 U.S. 112, 125 (1924), and **MR. JUSTICE BREWER**, 277 U.S. 363, 366 (1926).

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Byron
April 9, 1971

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 9, '71

Re: No. 548 - Ely v. Klahr

Dear Byron:

I agree.

Sincerely,

Bill
WJB

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 7, 1971

No. 548 -- Ely v. Klahr

Dear Byron,

I am glad to join your opinion for the Court in this case, and, in view of its thoroughness and length, I see no reason at all why it should not be a signed opinion.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

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1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 548.—OCTOBER TERM, 1970

Circulated: 4-7-71

Herbert L. Ely, Individually and
as Chairman of the Demo-
cratic Party of Arizona,
Appellant,
v.
Gary Peter Klahr et al.

Recirculated: _____
On Appeal From the
United States Dis-
trict Court for the
District of Arizona.

[April —, 1971]

PER CURIAM.

This appeal is the latest step in the long and fitful at-
tempt to devise a constitutionally valid reapportionment
scheme for the State of Arizona. For the reasons given,
we affirm the judgment of the District Court.

In April 1964, shortly before this Court's decision in *Reynolds v. Sims*, 377 U. S. 533 (1964), and its companion cases, suit was filed in the District Court for Arizona attacking the then-existing state districting laws as unconstitutional.¹ Following those decisions, the three-judge District Court ordered all proceedings stayed "until the expiration of a period of 30 days next following adjournment of the next session" of the Arizona Legislature. (App. 2-3, unreported.) Nearly a year later, on May 18, 1965, after the legislature had failed to act, the court again deferred trial pending a special legislative session called by the Governor to deal with the necessity of reapportionment. The special session enacted Senate Bill 11, which among other things provided one senator

¹ Throughout this litigation, congressional districting has been at issue as well and has suffered the same fate as reapportionment of the legislature. However, appeal has been taken here only with respect to the lower court's decree concerning legislative reapportionment.

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 5/26/71

No. 548.—OCTOBER TERM, 1970

Herbert L. Ely, Individually and
as Chairman of the Democratic Party of Arizona,
Appellant,
v.
Gary Peter Klahr et al.

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

[June —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal is the latest step in the long and fitful attempt to devise a constitutionally valid reapportionment scheme for the State of Arizona. For the reasons given, we affirm the judgment of the District Court.

In April 1964, shortly before this Court's decision in *Reynolds v. Sims*, 377 U. S. 533 (1964), and its companion cases, suit was filed in the District Court for Arizona attacking the then-existing state districting laws as unconstitutional.¹ Following those decisions, the three-judge District Court ordered all proceedings stayed "until the expiration of a period of 30 days next following adjournment of the next session" of the Arizona Legislature. (App. 2-3, unreported.) Nearly a year later, on May 18, 1965, after the legislature had failed to act, the

¹ Throughout this litigation, congressional districting has been at issue as well and has suffered the same fate as reapportionment of the legislature. However, appeal has been taken here only with respect to the lower court's decree concerning legislative reapportionment.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1971

Re: No. 548 - Ely v. Klahr

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

April 12, 1971

Re: No. 545 - Ely v. Kahr

Dear Byron:

Please join me. Like Potter, I see no reason
why this should not be a signed opinion.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

