

The Burger Court Opinion Writing Database

Lefkowitz v. Turley
414 U.S. 70 (1973)

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

February 14, 1973

Re: No. 72-331 - Lefkowitz v. Turley

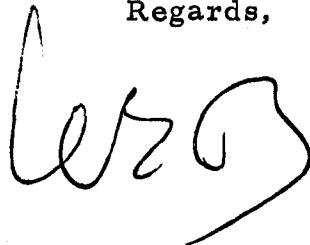
Dear Byron:

At Conference on this case I was "teetering" on the brink of NPJ because I had a strong feeling that the District Court was wrong, even though it was not without some support from Gardner, Uniform Sanitation, et al.

I suggested that a "p. c." be tried and if narrow enough I might be able to join and avoid oral argument. I now conclude that no matter how narrowly written, it involves approving an unsound and incorrect holding, although oral argument may alter my view.

Albeit reluctantly, I will vote to note.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 24, 1973

Dear Byron:

In No. 72-331 - Lefkowitz v. Turley,
please note I concur in the result.

W. O. D.

Mr. Justice White

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 5, 1973

RE: No. 72-331 - Lefkowitz v. Turley

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 26, 1973

72-331 - Lefkowitz v. Turley

Dear Byron,

I agree with the Per Curiam you have
circulated in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

HAB
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1-24-7

LOUIS J. LEFKOWITZ ET AL. v. M. RUSSELL Recirculated: _____
TURLEY ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

No. 72-331. Decided February —, 1973

PER CURIAM.

Appellees are licensed architects who have been employed by various municipal, county, and state agencies in the State of New York. In February 1971, they were called before a grand jury for questioning and requested to sign waivers of immunity. They refused to waive immunity, asserting the Fifth Amendment privilege against compulsory self-incrimination. Because of their refusal they were, pursuant to §§ 103-a and 103-b of the New York General Municipal Law and §§ 2601 and 2602 of the New York Public Authorities Law, declared ineligible to enter into any contract with any political subdivision of the State of New York.

Appellees sought declaratory and injunctive relief in the United States District Court for the Western District of New York asserting the unconstitutionality of the statutes which operated to disqualify them from future public contracting for refusal to sign a waiver of immunity. A three-judge court was impaneled and enjoined future enforcement of the statute. An appeal was brought to this Court pursuant to 28 U. S. C. § 1253.

We affirm the judgment of the District Court enjoining the further enforcement of the New York statutes that operate to disqualify appellees from public contracting "for failure to relinquish the protections of the privilege against self-incrimination." *Gardner v. Broderick*, 392 U. S. 273, 278 (1968); see also *Uniformed Sanitation Men Assn. v. Comm'r of Sanitation of the City of New*

To: The Chief Justice
Mr. Justice Doug
Mr. Justice Bren
Mr. Justice Stew
Mr. Justice Marsh
Mr. Justice Black
Mr. Justice Powe
Mr. Justice Rehnd

2nd DRAFT

From: White, J.

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 1-26

LOUIS J. LEFKOWITZ ET AL. v. M. RUSSELL
TURLEY ET AL.ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

No. 72-331. Decided February —, 1973

PER CURIAM.

Appellees are licensed architects who have been employed by various municipal, county, and state agencies in the State of New York. In February 1971, they were called before a grand jury for questioning and requested to sign waivers of immunity. They refused to waive immunity, asserting the Fifth and Fourteenth Amendments privilege against compulsory self-incrimination. Because of their refusal they were, pursuant to §§ 103-a and 103-b of the New York General Municipal Law and §§ 2601 and 2602 of the New York Public Authorities Law, declared ineligible to enter into any political subdivision of the State of New York.

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We affirm the judgment of the District Court enjoining the further enforcement of the New York statutes that operate to disqualify appellees from public contracting "for failure to relinquish the protections of the privilege against self-incrimination." *Gardner v. Broderick*, 392 U. S. 273, 278 (1968); see also *Uniformed Sanitation Men Assn. v. Comm'r of Sanitation of the City of New*

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
~~Mr.~~ Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

11
12
3rd DRAFT

From: White, J.

Circulated: _____

LOUIS J. LEFKOWITZ ET AL. v. M. RUSSELL
TURLEY ET AL.

Recirculated: 1-30-73

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

No. 72-331. Decided February —, 1973

PER CURIAM.

Appellees are licensed architects who have been employed by various municipal, county, and state agencies in the State of New York. In February 1971, they were called before a grand jury for questioning and requested to sign waivers of immunity. They refused to waive immunity, asserting the Fifth and Fourteenth Amendment privilege against compulsory self-incrimination. Because of their refusal they were, pursuant to §§ 103-a and 103-b of the New York General Municipal Law and §§ 2601 and 2602 of the New York Public Authorities Law, declared ineligible to enter into any contract with any political subdivision of the State of New York.

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We affirm the judgment of the District Court enjoining the further enforcement of the New York statutes that operate to disqualify appellees from public contracting "for failure to relinquish the protections of the privilege against self-incrimination." *Gardner v. Broderick*, 392 U. S. 273, 278 (1968); see also *Uniformed Sanitation Men Assn. v. Comm'r of Sanitation of the City of New*

HAB

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 7, 1973

Re: No. 72-331 - Lefkowitz v. Turley

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: Conference

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1973

Re: No. 72-331 - Lefkowitz v. Turley

Dear Bill:

I, too, would note jurisdiction and therefore join
your dissent circulated today.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

Copies to the Conference

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 2, 1973

Get memo back

Re: No. 72-331 Lefkowitz v. Turley

Dear Bill:

Your dissent has persuaded me that we should note jurisdiction.

Please join me.

Sincerely,

Rehnquist

Mr. Justice Rehnquist

cc: The Conference

4473

To: The Chief Justice
Mr. Justice Doug
Mr. Justice Bren
Mr. Justice Stewa
Mr. Justice White
Mr. Justice Marsh
~~Mr. Justice Black~~
Mr. Justice Powe

1st DRAFT

From: Rehnquist, J.

Circulated: 1/30/73

SUPREME COURT OF THE UNITED STATES

LOUIS J. LEFKOWITZ ET AL. v. M. RUSSELL TURLEY ET AL.

Recirculated:

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

No. 72-331. Decided February —, 1973

MR. JUSTICE REHNQUIST, dissenting.

I would note probable jurisdiction in this case for two reasons. First, the distinction between what is permitted the States and what is denied them, originally enunciated in *Gardner v. Broderick*, 392 U. S. 273 (1968), and reaffirmed today, is so gossamer as to require either elucidation or reevaluation. Second, I believe the Court ignores important factual distinctions in lumping together the facts of this case with those presented in *Gardner, supra*, and *Uniformed Sanitation Men Association v. Commissioner of Sanitation of the City of New York*, 392 U. S. 280 (1968).

I

Gardner was a New York City police patrolman. The facts of his case were thus described by the Court:

"In August 1965, pursuant to subpoena, appellant appeared before a New York County grand jury which was investigating alleged bribery and corruption of police officers in connection with unlawful gambling operations. He was advised that the grand jury proposed to examine him *concerning the performance of his official duties*. He was advised of his privilege against self incrimination, but he was asked to sign a 'waiver of immunity' after being told that he would be fired if he did not sign. Following his refusal, he was given an administrative

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

2nd DRAFT

From: Rehnquist, J.

Circulated:

LOUIS J. LEFKOWITZ ET AL. v. M. RUSSELL
TURLEY ET AL.

Recirculated 2/3/73

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

No. 72-331. Decided February —, 1973

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL concur, dissenting.

I would note probable jurisdiction in this case for two reasons. First, the distinction between what is permitted the States and what is denied them, originally enunciated in *Gardner v. Broderick*, 392 U. S. 273 (1968), and reaffirmed today, is so gossamer as to require either elucidation or reevaluation. Second, I believe the Court ignores important factual distinctions in lumping together the facts of this case with those presented in *Gardner, supra*, and *Uniformed Sanitation Men Association v. Commissioner of Sanitation of the City of New York*, 392 U. S. 280 (1968).

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