The Burger Court Opinion Writing Database

Papish v. Board of Curators of University of Missouri

410 U.S. 667 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

WHR

To: Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

From:

Circulated: MAR

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

BARBARA SUSAN PAPISH *v.* THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-794. Decided March —, 1973

MR. CHIEF JUSTICE BURGER, dissenting.

I join the dissent of JUSTICE REHNQUIST which follows and add a few additional observations.

The present case is clearly distinguishable from the Court's prior holdings in *Cohen, Gooding, and Rosenfeld,* as erroneous as those holdings are.* *Cohen, Gooding,* and *Rosenfeld* dealt with prosecutions under criminal statutes which allowed the imposition of severe penalties. Unlike such traditional First Amendment cases, we deal here with rules which govern conduct on the campus of a university.

In theory, at least, a university is not merely an arena for the discussion of ideas by students and faculty; it is also an institution where individuals learn to express themselves in acceptable, civil terms. We provide that environment to the end that students may learn the self-restraint necessary to the functioning of a civilized society and understand the need for those external restraints to which we must all submit if group existence is to be tolerable.

Cohen v. *California,* 403 U. S. 15, 27 (BLACKMUN, J., with whom BURGER, C. J. and Black, J., join, dissenting) (1971); *Gooding* v. *Wilson,* 405 U. S. 518, 528 (BURGER, C. J., dissenting), 534 (BLACKMUN, J., dissenting) (1972); *Rosenfeld* v. *New Jersey,* 408 U. S. 901, 902 (BURGER, C. J., dissenting), 903 (POWELL, J., dissenting), 909 (REHNQUIST, J., dissenting) (1972).

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 16, 1973

WDR
File

WD

Dear Lewis:

Please join me in your Per Curiam in No. 72-794 - Papish v. Board of Curators.

W. O. D.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1973

RE: No. 72-794 Papish v. Board of Curators of the University of Missouri

Dear Lewis:

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

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 15, 1973

Re: No. 72-794 - Papish v. Board of Curators

Dear Lewis,

Subject to my minor oral suggestion, I am glad to join the per curiam you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1973

Re: No. 72-794 - Papish v. Bd of Curators of University of Missouri

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 15, 1973

Re: No. 72-794 - Papish v. Board of Curators

Dear Lewis:

Please join me in your per curiam.

Sincerely,

T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 15, 1973

WHR
File

Re: No. 72-794 - Papish v. Board of Curators

Dear Lewis:

Will you please add the following at the end of your per curiam opinion:

"Mr. Justice Blackmun would deny the petition for writ of certiorari and therefore dissents."

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 16, 1973

Re: No. 72-794 - Papish v. Board of Curators

Dear Lewis:

I am joining Bill Rehnquist's dissent circulated late yesterday. Will you, therefore, please ignore the request I made of you in my note earlier in the day on February 15.

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 16, 1973

Re: No. 72-794 - Papish v. Board of Curators

Dear Bill:

Please join me in your dissent.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

Changes: pp 3, 4, 5

WHR file

To: The Ch...
Mr. Ju...
Mr. Just...
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Mr. Justi...
Mr. Justice...
—Mr. Justice...

From: Powell, J.

Circulated: FEB 16

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

BARBARA SUSAN PAPISH *v.* THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-794. Decided February —, 1973

PER CURIAM.

Petitioner, a graduate student in the University of Missouri School of Journalism, was expelled for distributing on campus a newspaper "containing forms of indecent speech" [1] in violation of the By-Laws of the Board of Curators. The newspaper, the Free Press Underground, had been sold on this state university campus for more than four years pursuant to an authorization obtained from the University Business Office. The particular newspaper issue in question was found to be unacceptable for two reasons. First, on the front cover the publishers had reproduced a political cartoon previously printed in another newspaper depicting policemen raping the Statue of Liberty and the Goddess of Justice. The caption under the cartoon read: ". . . With Liberty and Justice for All." Secondly, the issue contained an article entitled "M-----f----- Acquitted," which discussed the trial and acquittal on an assault charge of a New York City youth who was a member of an organization known as "Up Against the Wall, M-----f-----."

Following a hearing, the Student Conduct Committee found that petitioner had violated Paragraph B of Art. A of the General Standards of Student Conduct which re-

[1] This charge was contained in a letter from the University's Dean of Students, which is reprinted in the Court of Appeals opinion. 464 F. 2d 136, 139 (CA8 1972).

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: 2/15

Recirculated: _____

BARBARA SUSAN PAPISH *v.* THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72–794. Decided February —, 1973

MR. JUSTICE REHNQUIST, dissenting.

We held in *Healy* v. *James*, 408 U. S. 169, 180 (1972), that "state colleges and universities are not enclaves immune from the sweep of the First Amendment." But that general proposition does not decide the concrete case now before us. *Healy* held that the public university there involved had not afforded adequate notice and hearing of the action it proposed to take with respect to the students involved. Here the Court of Appeals found, and that finding is not questioned in the Court's opinion, that "the issue arises in the context of a student dismissal, after service of written charges and after a full and fair hearing, for violation of a University rule of conduct."

Both because I do not believe proper exercise of our jurisdiction warrants summary reversal in a case dependent in part on assessment of the record and not squarely governed by one of our decisions, and because I have serious reservations about the result reached by the Court, I dissent from the summary disposition of this case.

I

Petitioner Papish has for many years been a graduate student at the University of Missouri. Judge Stephenson, writing for the Court of Appeals in this case, summarized her record in these words:

> "Miss Papish's academic record reveals that she was in no rush to complete the requirements for her