

The Burger Court Opinion Writing Database

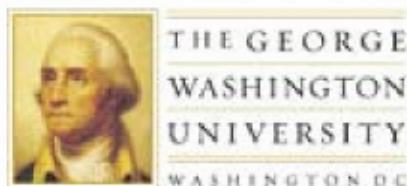
Mayor of Philadelphia v. Educational Equality League

415 U.S. 605 (1974)

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 19, 1974

Re: 72-1264 - Mayor of Philadelphia v. Educational
Equality League

Dear Potter:

I join you in the old-fashioned contingent
in terms of the use of the word "Negro". So far as
I am aware, I have never used any other term.

Regards,

WSB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 21, 1974

Re: No. 72-1264 - Mayor of the City of Philadelphia,
et al v. Educational Equality League,
et al

Dear Lewis:

Please join me.

Regards,

Mr. Justice Powell

Copies to the Conference

BSB

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 19, 1973

Dear Byron:

Would you want to write the
dissent in 72-1264, Mayor of Philadelphia
v. Educational Equality League?

W.O.D.
William O. Douglas

Mr. Justice White

cc: The Conference

December 19, 1973

Dear Bill:

As to your list of unassigned
dissents (December 18th) --

I have asked Byron if he'll
write in 72-1264.

I am writing (or have written)
in 72-1355, 72-482, ~~72-1328~~ and also
Edelman, 72-1410 which is not on your
list.

I have asked Potter if he'd
write in 72-885 and Thurgood if he'd write
in 72-403.

William O. Douglas

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 27, 1974

Dear Byron:

In 72-1264, Mayor of Philadelphia v. Educational Equality League please join me in your dissent.

lewd

William O. Douglas

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 8, 1974

Re: 72-1264 ^{Mayor} Phila v. Ed Equality

Dear Byron:

I am still with you on Part II.

I'd let Part I be -- sound asleep
-- as no one raised the point -- and the
majority do not touch it.

W. O. D.
WILLIAM O. DOUGLAS

Mr. Justice White

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 21, 1974

Dear Byron:

Please join me in Part II of your
dissent in 72-1264, Mayo v. Educational
Equality League.

3 JJ
William O. Douglas

Mr. Justice White

cc: The Conference

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

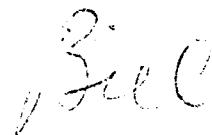
CHAMBERS OF
JUSTICE WILLIAM J. BRENNAN, JR. March 6, 1974

PL No. 72-1264 Mayor of Philadelphia v.
Educational Equality League, et al.

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc. The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 19, 1974

Re: No. 72-1264, Mayor v. Educational Equality
League

Dear Lewis,

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

I know I am getting old, and perhaps old-fashioned
as well, but I have a strong personal preference for the
word "Negro" both as adjective and noun rather than
"black." I would be interested in knowing the views of
the Brethren on this question.

Sincerely yours,

P.S.
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

January 2, 1974

Re: No. 72-1264, Mayor of Philadelphia v.
Educational Equality League

Dear Bill:

I should be glad to attempt a dissent in
this case.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1264

From: White, J.

Circulated: 2-27-74

Recirculated: _____

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[February —, 1974]

MR. JUSTICE WHITE, dissenting in part.

On the record in evidence before it, the Court of Appeals found that the 1971 nominating panel was discriminatorily chosen. Although the sufficiency of the evidence to support that conclusion is arguable, I would not substitute our own view of the facts and overturn the Court of Appeals' judgment in this respect. Negroes comprised 34% of the population, and 60% of the public school students were Negroes. The purpose of the ordinance establishing the nominating panel was to stimulate and invite participation by all groups in the community, including Negroes and other minorities. It is, therefore, especially significant, even from this distant vantage point, that despite the evident intent of the ordinance to have municipal authorities seek out city-wide associations and interest groups, the city official most responsible, short of the Mayor, for the composition of the panel confessed ignorance of many of the organizations from which nominations to the commission might have been made and which might have put forward meritorious suggestions for school board membership. There was also highly probative evidence with respect to the Mayor's statement that he intended to

Part I is new and
see pp 11 + 13

3rd DRAFT

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

SUPREME COURT OF THE UNITED STATES

FROM: White, J.

No. 72-1264

Circulated:

Recirculated: 3-5-74

Mayor of the City of Philadelphia et al., Petitioners,
v.
Educational Equality League et al.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

(February 22, 1974)

MR. JUSTICE WHITE, dissenting

I

Although the majority describes the "gravamen" of the respondents' complaint as grounded on the Equal Protection Clause of the Fourteenth Amendment, respondents equally contended that the racially discriminatory appointment of members to the Educational Nominating Panel violated "the express provisions and intended purpose of the Educational Supplement" to the Philadelphia Home Rule Charter. The action sought injunctive and declaratory relief, under 42 U. S. C. § 1983, and jurisdiction was invoked under 28 U. S. C. § 1333 (3).

The District Court, after trial at which evidence was developed on both the constitutional and state claims, decided the constitutional claim adversely to the respondents. As to the state claim, the court stated:

"Further, plaintiffs would have us construe Section 12-206 (e) of the Educational Supplement to hold that the phrase 'representative of the community' refers to racial balance. However, the interpretation of this statute would more properly be decided

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

pp 8-9, 15

4th DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-1264

Recirculated: 3-7-7

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[February —, 1974]

MR. JUSTICE WHITE, dissenting.

I

Although the majority describes the "gravamen" of the respondents' complaint as grounded on the Equal Protection Clause of the Fourteenth Amendment, respondents equally contended that the racially discriminatory appointment of members to the Educational Nominating Panel violated "the express provisions and intended purpose of the Educational Supplement" to the Philadelphia Home Rule Charter. The action sought injunctive and declaratory relief, under 42 U. S. C. § 1983, and jurisdiction was invoked under 28 U. S. C. § 1333 (3).

The District Court, after trial at which evidence was developed on both the constitutional and state claims, decided the constitutional claim adversely to the respondents. As to the state claim, the court stated:

"Further, plaintiffs would have us construe Section 12-206 (c) of the Educational Supplement to hold that the phrase 'representative of the community' refers to racial balance. However, the interpretation of this statute would more properly be decided

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

pp 1 6-8

5th DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-1264

Recirculated: 3-21-7

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[February —, 1974]

MR. JUSTICE WHITE, dissenting.

I

Although the majority describes the "gravamen" of the respondents' complaint as grounded on the Equal Protection Clause of the Fourteenth Amendment, respondents equally contended that the racially discriminatory appointment of members to the Educational Nominating Panel violated "the express provisions and intended purpose of the Educational Supplement" to the Philadelphia Home Rule Charter.¹ The action sought injunctive and declaratory relief, under 42 U. S. C.

¹ This was a "short and plain statement of the claim," and was a general assertion that there had been racially discriminatory appointments in violation of the Charter. As the Court stated in *Conley v. Gibson*, 355 U. S. 41, 47-48 (1957), "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." A fair reading of the complaint shows that this general claim was supported by allegations of racial discrimination in the body of the complaint and that other violations of the Supplement were asserted "[i]n addition" to the allegations of racial discrimination.

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

pp 1, 11

6th DRAFT

From: White, J.

Circulated: _____

Encirculated: 3-22-7

SUPREME COURT OF THE UNITED STATES

No. 72-1264

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit.

[February —, 1974]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting

I

Although the majority describes the "gravamen" of the respondents' complaint as grounded on the Equal Protection Clause of the Fourteenth Amendment, respondents equally contended that the racially discriminatory appointment of members to the Educational Nominating Panel violated "the express provisions and intended purpose of the Educational Supplement" to the Philadelphia Home Rule Charter.¹ The action sought injunctive and declaratory relief, under 42 U. S. C.

¹ This was a "short and plain statement of the claim," and was a general assertion that there had been racially discriminatory appointments in violation of the Charter. As the Court stated in *Conley v. Gibson*, 355 U. S. 41, 47-48 (1957), "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." A fair reading of the complaint shows that this general claim was supported by allegations of racial discrimination in the body of the complaint and that other violations of the Supplement were asserted "[i]n addition" to the allegations of racial discrimination.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 21, 1974

Re: No. 72-1264 -- Mayor of Philadelphia v.
Educational Equality League

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 4, 1974

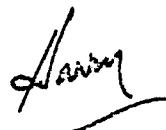
Dear Lewis:

Re: No. 72-1264 - Mayor v. Educational
Equality League

Will you please place the following at the end of your
opinion:

"Mr. Justice Blackmun concurs in Part II
of the Court's opinion and therefore joins
in its judgment."

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1974

Re: No. 72-1264 - Mayor of Philadelphia v.
Educational Equality League

Dear Lewis:

This will supplement my note of March 4. You may also
join me in Part III of your opinion.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 20, 1974

Re: No. 72-1264 - Mayor of Philadelphia v.
Educational Equality League

Dear Lewis:

I have carefully recanvassed my posture in this case.
Please join me now in your opinion in full and ignore my qualified joinder set forth in my notes of March 4 and 5.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Mr. Justice Powell, Jr.

No. 72-1264

Circulated: FEB 15 1974

Recirculated:

Mayor of the City of
 Philadelphia et al.,
 Petitioners.

v.
 Educational Equality
 League et al.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Third Circuit.

[February —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

In 1965 the voters of Philadelphia approved a public education supplement to their city charter establishing the present structure of the Philadelphia Board of Education (the School Board or Board). The supplement, which appears as Art. XII of the city charter,¹ vests in the Mayor a double appointment power with regard to the School Board. The Mayor appoints the nine members of the Board, but he is assisted in that task by another entity that he also appoints, the Educational Nominating Panel (the Nominating Panel or Panel). The function of the Panel is to seek out qualified candidates for service on the School Board by polling civic organizations and the citizenry at large, to interview those candidates, to deliberate on their qualifications, and to submit selected nominees to the Mayor. The Panel submits three nominees for every vacancy on the Board. In his discretion, the Mayor may request an

¹ The relevant provisions of Art. XII of the Philadelphia Home Rule Charter are set forth as an appendix, at pp. ——, *infra*.

February 20, 1974

No. 7201264 Mayor of Philadelphia v. Educational
Equality League

Dear Potter:

Until I came to the Court I customarily used the word "Negro". I gained the impression here (perhaps erroneously), and also from the national media, that the current preferred usage was "black".

I would happily follow whichever usage Thurgood recommends.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: The Conference

MP 8.9

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated:

No. 72-1264

Recirculated FEB 21 1974

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al. } On Writ of Certiorari to the
Petitioners, United States Court of Ap-
peals for the Third Circuit.

[February —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

In 1965 the voters of Philadelphia approved a public education supplement to their city charter establishing the present structure of the Philadelphia Board of Education (the School Board or Board). The supplement, which appears as Art. XII of the city charter,¹ vests in the Mayor a double appointment power with regard to the School Board. The Mayor appoints the nine members of the Board, but he is assisted in that task by another entity that he also appoints, the Educational Nominating Panel (the Nominating Panel or Panel). The function of the Panel is to seek out qualified candidates for service on the School Board by polling civic organizations and the citizenry at large, to interview those candidates, to deliberate on their qualifications, and to submit selected nominees to the Mayor. The Panel submits three nominees for every vacancy on the Board. In his discretion, the Mayor may request an

¹ The relevant provisions of Art. XII of the Philadelphia Home Rule Charter are set forth as an appendix, at pp. — — —, *infra*.

pp 11, 12, 13, 16

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

3rd DRAFT

From: Powell, J.

Circulated:

No. 72-1264

Recirculated: MAR 1 1974

Mayor of the City of Philadelphia et al.,
Petitioners,
v.
Educational Equality League et al.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February — 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

In 1965 the voters of Philadelphia approved a public education supplement to their city charter establishing the present structure of the Philadelphia Board of Education (the School Board or Board). The supplement, which appears as Art. XII of the city charter,¹ vests in the Mayor a double appointment power with regard to the School Board. The Mayor appoints the nine members of the Board, but he is assisted in that task by another entity that he also appoints, the Educational Nominating Panel (the Nominating Panel or Panel). The function of the Panel is to seek out qualified candidates for service on the School Board by polling civic organizations and the citizenry at large, to interview those candidates, to deliberate on their qualifications, and to submit selected nominees to the Mayor. The Panel submits three nominees for every vacancy on the Board. In his discretion, the Mayor may request an

¹ The relevant provisions of Art. XII of the Philadelphia Home Rule Charter are set forth as an appendix, at pp. — — —, *infra*.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 6, 1974

No. 72-1264 Mayor of Philadelphia v. Educational Equality League

MEMORANDUM TO THE CONFERENCE:

Byron's revised dissent, circulated March 5, would vacate the judgment of the Court of Appeals and remand to the District Court for assessment of a state law claim. This was not a question raised in the petition for certiorari, nor was it addressed or considered in the briefs, in oral argument or in our Conference discussion.

While this does not suggest in any sense that the Court is foreclosed from considering it at this time, I write this memorandum primarily to say that Byron has raised a new question and although I am not inclined to agree with his proposed resolution of it, I will require additional time for study and for the circulation of a revised draft opinion. I will do this as promptly as I can.

I might add that I am troubled by the implication of a proposed rule that would require federal district courts in civil rights cases to disregard federal constitutional claims in favor of peripheral state law issues. Moreover, I am not sure that I agree with the notion that abstention is appropriate in civil rights cases whenever there is a question of state law of so little color as is present here.

Sincerely,



LFP/gg

pp 5, 12, 13, 15, 16,
17 et seq

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

4th DRAFT

From: Powell, J.

Circulated:

No. 72-1264

Recirculated: MAR 18 1974

SUPREME COURT OF THE UNITED STATES

Mayor of the City of
Philadelphia et al.,
Petitioners,
v.
Educational Equality
League et al.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

{February — 1974}

MR. JUSTICE POWELL delivered the opinion of the
Court.

In 1965 the voters of Philadelphia approved a public education supplement to their city charter establishing the present structure of the Philadelphia Board of Education (the School Board or Board). The supplement, which appears as Art. XII of the city charter,¹ vests in the Mayor a double appointment power with regard to the School Board. The Mayor appoints the nine members of the Board, but he is assisted in that task by another entity that he also appoints, the Educational Nominating Panel (the Nominating Panel or Panel). The function of the Panel is to seek out qualified candidates for service on the School Board by polling civic organizations and the citizenry at large, to interview those candidates, to deliberate on their qualifications, and to submit selected nominees to the Mayor. The Panel submits three nominees for every vacancy on the Board. In his discretion, the Mayor may request an

¹ The relevant provisions of Art. XII of the Philadelphia Home Rule Charter are set forth as an appendix, at pp. ——, *infra*.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1974

Re: No. 72-1264 - Mayor of the City of Philadelphia
v. Educational Equality League

Dear Lewis:

Please join me.

sincerely,

W

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 18, 1974

Re: No. 72-1264 - Mayor v. Educational Equality League

Dear Lewis:

I think you have done a good job in your new Part IV in responding to Byron's intentions about abstention. I find myself in full agreement with everything in the section except the text of footnote 24, with its reference to the ALI proposal. I am not sure whether I would have voted for the proposal if I had been a member of the ALI at the time it was adopted, but I don't see that it has any very direct bearing on the state of the law of abstention in this Court. I would much prefer to see you say no more than you have to decide this particular case.

Sincerely,

bill

Mr. Justice Powell