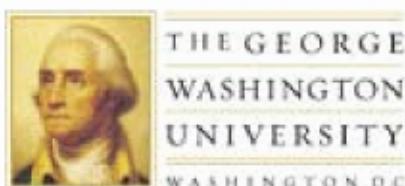


# The Burger Court Opinion Writing Database

*Bradley v. School Board of Richmond*  
416 U.S. 696 (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

May 7, 1974

Re: No. 72-1322 - Bradley, et al v. School Board of  
City of Richmond, et al

Dear Harry:

Please join me.

Regards,

WRB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 11, 1974

Dear Harry:

Please join me in your opinion for  
the Court on 72-1322, Bradley v. School  
Board of City of Richmond, et al.

*W. O. D.*  
William O. Douglas

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

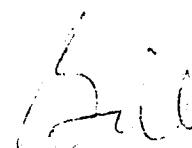
April 11, 1974

RE: No. 73-1322 Bradley v. School Board of  
City of Richmond, et al.

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 11, 1974

Re: No. 72-1322, Bradley v. Richmond School  
Board

Dear Harry,

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

Sincerely yours,

P. S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 18, 1974

Re: No. 72-1322 - Bradley v. School Board of  
City of Richmond

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

April 11, 1974

Re: No. 72-1322 -- Bradley v. School Board of City  
of Richmond

---

Dear Harry:

I am still "out" of this one.

Sincerely,

T. M.

Mr. Justice Blackmun

April 11, 1974

Dear Lewis:

Re: No. 72-1322 - Bradley v. School Board of  
City of Richmond

My notes indicate that you are not participating in this case, and I have so indicated at the end of the opinion. If this is not correct, please let me know.

I do not wish in this opinion to be in any way offensive to the parties involved in this long and difficult litigation. I certainly cannot ask you to study with great care an opinion in a case in which you do not participate, but if, in scanning it, you observe anything that you feel might be regarded as offensive, please let me know.

Sincerely,

HAB

Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 11, 1974

Dear Thurgood:

Re: No. 72-1322 - Bradley v. School Board of  
City of Richmond

My notes indicate that you are not participating in this case,  
and I have so indicated at the end of the opinion. If this is not correct,  
please let me know.

Sincerely,



Mr. Justice Marshall

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

1st DRAFT

From: [Redacted] 4/14/74

**SUPREME COURT OF THE UNITED STATES**

No. 72-1322

Recirculated

Carolyn Bradley et al.,  
Petitioners,  
v.  
School Board of City of  
Richmond et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit.

[April 1, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this protracted school desegregation litigation, the District Court awarded the plaintiff-petitioners expenses and attorneys' fees for services rendered from March 10 1970, to January 29, 1971. 53 F. R. D. 28 (SD Va. 1971). The United States Court of Appeals for the Fourth Circuit, one judge dissenting, reversed. 472 F. 2d 318 (1972). We granted certiorari, 412 U. S. 937 (1973), to determine whether the allowance of attorneys' fees was proper. Pertinent to the resolution of the issue is the enactment in 1972 of 20 U. S. C. § 617 (being § 718 of Title VII, the Emergency School Aid Act, constituting a portion of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 235, 369).

I

~~The history of the litigation provides background and deserves review in some detail.~~

The suit was instituted in 1961 by 11 Negro parents and guardians against the School Board of the city of Richmond, Virginia, as a class action under the Civil Rights Act of 1871, 42 U. S. C. § 1983, to desegregate the

PP. 1, 4, 7, 8, 15, 19

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

2nd DRAFT

From: Blackmun, .

SUPREME COURT OF THE UNITED STATES

No. 72-1322

Recirculated: 4/12/74

Carolyn Bradley et al.,  
Petitioners,  
v.  
School Board of City of  
Richmond et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit.

[April --, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this protracted school desegregation litigation, the District Court awarded the plaintiff-petitioners expenses and attorneys' fees for services rendered from March 10, 1970, to January 29, 1971. 53 F. R. D. 28 (ED Va. 1971). The United States Court of Appeals for the Fourth Circuit, one judge dissenting, reversed. 472 F. 2d 318 (1972). We granted certiorari, 412 U. S. 937 (1973), to determine whether the allowance of attorneys' fees was proper. Pertinent to the resolution of the issue is the enactment in 1972 of § 718 of Title VII, the Emergency School Aid Act, 20 U. S. C. § 1617, as part of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat 235, 369.

I

The suit was instituted in 1961 by 11 Negro parents and guardians against the School Board of the city of Richmond, Virginia, as a class action under the Civil Rights Act of 1871, 42 U. S. C. § 1983, to desegregate the public schools. On March 16, 1964, after extended consideration,<sup>1</sup> the District Court approved a "freedom of

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 15, 1974

file

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1404 - Capers v. Cuyahoga County Board of Elections

This was a hold for No. 72-1322, Bradley v. School Board. The case concerns an award for attorneys' fees, all right, but not fees asserted in a § 1983 desegregation suit. Bradley would be significant if it had been decided on grounds apart from the special 1972 statute.

The primary petitioner here, a Mrs. Capers, who is a Negro, wanted to run as an independent candidate for Mayor of Cleveland in the 1971 election. The other petitioner is a voter who desired to support her. The respondent election board is charged with conducting elections in Cuyahoga County. It does not have power to determine filing or election dates; these are fixed by statute or ordinance. The Board, however, is in the position of interpreting the pertinent statutes and ordinances.

In January 1971 the primary petitioner sought to obtain nominating petition forms from the Board. She was told that these were not yet available, but that she should not worry because she had until the end of June in which to file. She obtained the forms by March and began circulating them.

The petitioners allege that the major parties considered it to their advantage to bar independent candidates. They also allege that the Board decided to interpret the applicable statutes so as to require independents to file their petitions nine months before an election. This, in effect, operated to exclude all independents in the 1971 election, for on April 12 of that year the Board announced that independents should have filed by February 3, a date when forms were not yet available.

Memorandum to the Conference  
No. 72-1404  
Page 2

Judge Lambros made a finding that the Board had acted in bad faith. He also ordered the Board to accept petitions from independents on the same basis as they did from candidates of the two major parties. Attorneys' fees were allowed and taxed as costs. The Board appealed only on the fee award.

The CA 6 remanded for findings and conclusions in support of the award. At this point, on motion, Judge Lambros disqualified himself and the case was taken on by Judge Battisti. He conducted a hearing and reaffirmed the award. He also stated that there was no justification for the Board's action and that a "finding of bad faith and improper motivation may clearly be made." Thus, "The Court must conclude that the actions of the Board were in bad faith" and warranted the taxing of attorneys' fees as costs.

The Board again appealed the fee award. The CA 6 once more reversed, holding that the bad faith finding was clearly erroneous.

There may be some question as to whether a fee award of this kind in this context is appealable. I am inclined to think it is. Assuming appealability, we are confronted with a situation where the CA 6 has overturned, summarily, the District Court's finding of bad faith, a finding that was made by two successive district judges.

In view of the route we have taken in Bradley, that decision is not directly controlling here. The grant or denial of certiorari in this case, therefore, is to be determined on its own facts and merit.

H. A. B.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 15, 1974

Re: No. 72-1322 - Bradley v. School Board of City of  
Richmond

Dear Harry:

Please join me in your opinion for the Court in this case.

Sincerely,

*W.H.R.*

Mr. Justice Blackmun

Copies to the Conference