The Burger Court Opinion Writing Database

Lau v. Nichols

414 U.S. 563 (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

January 2, 1974

Re: 72-6520 - Lau v. Nichols

Dear Bill:

It was my understanding that we would dispose of this case on statutory grounds thus making it unnecessary to reach the constitutional claims.

I will be unable to join in any disposition that goes beyond the statute.

Regards,

WEB

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 17, 1974

Re: 72-6520 - Lau v. Nichols

Dear Potter:

Please show me as joining in your opinion in which you concur in the result reached by the Court.

Regards,

Mr. Justice Stewart

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

12-22-73

No. 72-6520

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, v. Alan H. Nichols et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree. 339 F. Supp. 1315. See *Lee* v. *Johnson*, 404 U. S. 1215. There are now 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language. About 1,800 however do not receive that instruction.

This class suit brought by non-English speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seek relief against the unequal educational opportunities which are alleged to violate the Fourteenth Amendment. No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioner asks only that the Board

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-6520

Circulate: _____

Recirculated: 12-27

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, *v.* Alan H. Nichols et al.

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

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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

3rd DRAFT

Mr. Justice Douglas; J.

SUPREME COURT OF THE UNITED STATES

Circulate: _____

No. 72-6520

Recirculated: 1-3-74

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, v. Alan H. Nichols et al.

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

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree, 339 F. Supp. 1315. See *Lee* v. *Johnson*, 404 U. S. 1215. There are now 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language. About 1,800 however do not receive that instruction.

This class suit brought by non-English speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seeks relief against the unequal educational opportunities which are alleged to violate the Fourteenth Amendment. No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioner asks only that the Board

To : The Chief Justice
Mr. Justice Brennan

4th DRAFT

From: D.

SUPREME COURT OF THE UNITED STATES

No. 72-6520

Recirculated: 1-8

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, *v.* Alan H. Nichols et al.

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

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree, 339 F. Supp. 1315. See *Lee* v. *Johnson*, 404 U. S. 1215. The District Court found that there are 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language.[1] About 1,800 however do not receive that instruction.

[1] A reported adopted by the Human Rights Commission of San Francisco and submitted to the Court by respondent after oral argument shows that, as of April 1973, there were 3,457 Chinese students in the school system who spoke little or no English. The document further showed 2,136 students enrolled in Chinese special instruction classes, but at least 429 of the enrollees were not Chinese but were included for ethnic balance. Thus, as of April 1973, no more than 1,707 of the 3,457 Chinese students needing special English instruction were receiving it.

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6520

1-10

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, v. Alan H. Nichols et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree, 339 F. Supp. 1315. See *Lee* v. *Johnson*, 404 U. S. 1215. The District Court found that there are 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language.[1] About 1,800 however do not receive that instruction.

[1] A reported adopted by the Human Rights Commission of San Francisco and submitted to the Court by respondent after oral argument shows that, as of April 1973, there were 3,457 Chinese students in the school system who spoke little or no English. The document further showed 2,136 students enrolled in Chinese special instruction classes, but at least 429 of the enrollees were not Chinese but were included for ethnic balance. Thus, as of April 1973, no more than 1,707 of the 3,457 Chinese students needing special English instruction were receiving it.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 28, 1973

Re: No. 72-6520 Kinney Kinmon Lau v. Alan H. Nichols

Dear Bill:

Please join me.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 10, 1974

No. 72-6520, Lau v. Nichols

Dear Bill,

Early this week I sent a brief concurring opinion to the printer. If, as, and when it comes back, I shall promptly circulate it.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

1st DRAFT

From: Stewart, J.

Circulated: JAN 10 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-6520

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, *v.* Alan H. Nichols et al.

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

[January —, 1974]

MR. JUSTICE STEWART, concurring in the result.

It is uncontested that more than 2,800 school children of Chinese ancestry attend school in the San Francisco Unified School District system even though they do not speak, understand, read, or write the English language, and that as to some 1,800 of these pupils the respondent school authorities have taken no significant steps to deal with this language deficiency. The petitioners do not contend, however, that the respondents have affirmatively or intentionally contributed to this inadequacy, but only that they have failed to act in the face of changing social and linguistic patterns. Because of this laissez faire attitude on the part of the school administrators, it is not entirely clear that § 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, standing alone, would render illegal the expenditure of federal funds on these schools. For that section provides that "[n]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 72-6520 - Lau v. Nichols

Dear Bill:

The equal protection thesis still shows through in your December 27 draft too much for me to join. Please add at the foot of your opinion that Mr. Justice White concurs in the judgment, solely on the statutory ground.

Sincerely,

Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1974

Re: No. 72-6520 -- Kinney Kinmon Lau, etc. v. Alan H. Nichols et al.

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 26, 1973

Re: No. 72-6520 - Lau v. Nichols

Dear Bill:

My notes indicate that the consensus was to decide this case on the basis of the statute rather than on constitutional grounds. Perhaps I am mistaken. I remain reluctant to pursue the equal protection route here and shall defer my vote pending expressions from the others.

Sincerely,

Harry

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 14, 1974

Re: No. 72-6520 - Lau v. Nichols

Dear Potter:

If you have no objection, please join me in your concurring opinion. I am writing a few paragraphs myself and hope that these will be around within a day or so.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6520

Kinney Kinmon Lau, a Minor by and Through Mrs. Kam Wai Lau, His Guardian ad litem, et al., Petitioners, *v.* Alan H. Nichols et al.

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

[January —, 1974]

MR. JUSTICE BLACKMUN, concurring in the result.

I join MR. JUSTICE STEWART's opinion and thus I, too, concur in the result. Against the possibility that the Court's judgment may be interpreted too broadly, I stress the fact that the children with whom we are concerned here number about 1800. This is a very substantial group that is being deprived of any meaningful schooling because they cannot understand the language of the classroom. We may only guess as to why they have had no exposure to English in their preschool years. Earlier generations of American ethnic groups have overcome the language barrier by earnest parental endeavor or by the hard fact of being pushed out of the family or community nest and into the realities of broader experience.

I merely wish to make plain that when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guideline require the funded school district to

January 9, 1974

No. 72-6520 Lau v. Nichols

Dear Bill:

I expect to join you in this case, but have hesitated until now because of some concern over your reference to Brown v. Board of Education (p. 2), and the follow-up reference (although quite a brief one) to Dennis v. United States (p. 3, 4).

I am in entire accord with your decision for the Court on statutory grounds. My concern about the above-mentioned references is that they may invite additional suits, on equal protection grounds, by various groups in our public schools. I know from my own eleven years service on a school board that it is impossible to make available to all students at the same time all improvements, advanced techniques, and specific educational opportunities. At almost any given time there will be a significant number of students who do have have everything available to them that has been provided in some other schools or for some other students within the system. This results from budgetary constraints, lack of available qualified personnel, and from the sheer size and complexity of many school systems.

I know, of course, that you were addressing discrimination based on race. Yet the Equal Protection Clause does not stop there.

I have marked, on the enclosed copy of your opinion, the paragraphs referring to the Equal Protection Clause. I believe, if you were so disposed, they could be omitted without in any sense diluting the force of your opinion under the Civil Rights Act of 1964.

I am not sending this letter to the Conference.

Sincerely,

Mr. Justice Douglas

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 10, 1974

No. 72-6520 Lau v. Nichols

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Douglas

lfp/ss

cc: The Conference

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

January 10, 1974

No. 72-6520 Lau v. Nichols

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Douglas

lfp/ss

cc: The Conference

Bill - Thx thanks for making the changes

L.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 28, 1973

Re: No. 72-6520 - Lau v. Nichols

Dear Bill:

Can you see your way clear to deleting or substantially modifying the last two paragraphs on page 3 of your opinion, the first of which begins "There is plainly state action. . ." and the second of which begins "When violation of the Equal Protection Clause . . ."? Since the opinion now rests on the Act of 1964 and the HEW regulations, these paragraphs directed to the constitutional issue seem to be dicta.

On the theory that there may be no harm in asking, let me make one additional request. The last sentence on page 6 now reads:

> "Whatever may be the limits of that power, Steward Machine Co. v. Davis, 301 U.S. 548, 590 et seq., is not a question of present concern for Congress in the spirit of the Reconstruction Amendments made plain that: [followed by a quotation from Senator Humphrey]"

In order that the reader does not take Senator Humphrey's quoted statement to be a capsulization of the 1964 Civil Rights Act, would you be willing to put it this way:

> "Whatever may be the limits of that power, Steward Machine Co. v. Davis, 301 U.S. 548,

590 et seq., they have not been reached here. Senator Humphrey, during the Floor debates on the Civil Rights Act of 1964, said: [Humphrey quotation]."

Sincerely,

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1974

Re: No. 72-6520 - Lau v. Nichols

Dear Bill:

Please join me in your circulation of today in this case.

Sincerely,

WHR

Mr. Justice Douglas

Copies to the Conference