The Burger Court Opinion Writing Database

Cleveland Board of Education v. LaFleur

414 U.S. 632 (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

December 20, 1973

Re: No. 72-777 - Cleveland Board of Education, et al v. Jo Carol LaFleur et al
No. 72-1129- Susan Cohen v. Chesterfield County School Board, et al

Dear Bill:

Please join me in your dissent.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 22, 1973

Dear Chief:

I forgot to remind you that at Conference it seemed to be the consensus that 72-777, Cleveland Bd. of Education v. La Fleur and 72-1129, Cohen v. Chesterfield County School Bd. should be assigned to Potter.

WILLIAM O. DOUGLAS

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 4, 1973

Dear Potter:

In 72-777, Cleveland Bd. of Ed. v. La Fleur and 72-1129, Cohen v. Chesterfield County School Bd. please join me in your opinion.

WILLIAM O. DOUGLAS

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 18, 1974

Dear Potter:

As you know I joined your opinion for the Court in Cleveland Board of Education v. La Fleur; but Lewis' separate opinion stirs in me some of the doubts I had in Vlandis where I was in dissent.

So I have decided to withdraw my concurrence with you in La Fleur and ask you to note at the end that I concur in the result.

WOD

William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 5, 1973

RE Nos. 72-777 & 72-1129 - Cleveland Bd. of Education v. LaFleur and Cohen v. Chesterfield County School Board, et al.

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: 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

2nd DRAFT

From: Justice S.

Circulated: DEC 3 1973

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 72-777 AND 72-1129

Cleveland Board of Education et al., Petitioners, 72-777 v. Jo Carol LaFleur et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
Susan Cohen, Petitioner, 72-1129 v. Chesterfield County School Board et al	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[December —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioners in No. 72-777 and the respondent in No. 72-1129 are female public school teachers. During the 1970-1971 school year, each informed her local school board that she was pregnant; each was compelled by a mandatory maternity leave rule to quit her job without pay several months before the expected birth of her child. These cases call upon us to decide the constitutionality of the school boards' rules.

I

Jo Carol LaFleur and Ann Elizabeth Nelson, the respondents in No. 72-777, are junior high school teachers employed by the Board of Education of Cleveland, Ohio. Pursuant to a rule first adopted in 1952, the school board requires every pregnant school teacher to take a maternity leave without pay, beginning five months before the expected birth of her child. Application for such leave

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72–777 AND 72–1129

Cleveland Board of Education et al., Petitioners, 72–777 v. Jo Carol LaFleur et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
Susan Cohen, Petitioner, 72–1129 v. Chesterfield County School Board et al.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[December — 1973]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 6, 1973

Re: Nos. 72-777 & 72-1129 - Cleveland Board of Education v. LaFleur

Dear Potter:

Please join me. I may also write separately and shall be interested in what is said in dissent.

Sincerely,

Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1973

Re: No. 72-777 -- Cleveland Board of Education v. LaFleur et al. and
No. 72-1129 -- Susan Cohen v. Chesterfield Co. School Board et al.

Dear Potter:

Please join me in your opinion.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

72-777
72-1129

November 16, 1973

Re: Maternity Leave Cases

Dear Potter:

A member of the faculty of the College of Law at Ohio Northern University apparently is publishing a law review article on maternity leave. The article is due to appear in an issue scheduled to come out before the end of the year. He took the liberty of sending me the final galley proof. I have not looked at it, but I send it on to you in case one of your clerks might be interested in perusing it.

Sincerely,

HAB

Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1973

Re: No. 72-777 - Cleveland Board of Education
v. LaFleur
No. 72-1129 - Cohen v. Chesterfield County
School Board

Dear Potter:

If you will correct the "reverse English" which has crept into the very first sentence of your opinion (and if you can see your way clear to make a change in "style" which I am covering by a separate note), I am with you.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

December 5, 1973

No. 72-777 Cleveland Board of Education v. LaFleur
No. 72-1129 Cohen v. Chesterfield County

Dear Potter:

I have read your draft (circulated December 3) of an opinion for the Court in the above cases. Although I would have preferred an equal protection analysis, I think you have presented the due process rationale very forcefully and in accord with Vlandis which I joined last Term.

Accordingly, I expect to join you if you will meet one point which is of considerable importance to public education as I view it. I am afraid that the opinion as now drafted would be construed as foreclosing the possibility of any cut off date of general application, however reasonable in point of time it may be. I have roughed out, for your consideration, a paragraph dealing with this point. My proposal might be worked into the opinion on page 14, either in substitution for the first full paragraph thereof or as a separate paragraph accompanied by some modification of the present first full paragraph.

I am also a bit concerned by the broad sweep of the last sentence in the second full paragraph on page 14. School board regulations, dealing as they often do with several thousand teachers, necessarily include inrebuttable presumptions on a number of subjects pertaining to the conduct and duties of teachers. I recognize, of course, that your statement is related specifically to childbearing. But I am apprehensive that it may create problems in future cases involving different types of teacher regulations which, of necessity, have to be applied across the board in the overall interest of discipline and efficiency. I do not think your paragraph would be weakened if you ended it after "Fourteenth Amendment", omitting the last three lines.

a minimal lead time and a measure of certainty as to the dates on

I have made two or three minor suggested language changes in a copy of your opinion which I will deliver to you with this letter.

This is not being circulated to the Conference, as I wanted to share my thoughts with you informally.

Sincerely,

Mr. Justice Stewart

lfp/ss

a *minimal lead time* and a measure of certainty as to the dates on

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1974

Dear Bill:

As I told you this morning, I'll be writing in Nos. 72-812 and 72-6050, Storer and Fromm-hagen v. Brown. Under the circumstances, I've taken the liberty of asking Thurgood to take on the dissent in Bill Rehnquist's Richardson v. Ramirez, No. 72-1589. You'll remember I had previously said I'd write it.

Sincerely,

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1973

No. 72-777 and No. 72-1129 Pregnant Teachers' Cases

Dear Potter:

This will confirm that I will join the judgment of the Court in the above cases, but may write a brief concurring opinion.

I have viewed these cases as controlled by the Equal Protection rather than the Due Process Clause. You make a strong case for the latter, and no doubt the judgment can be supported under either clause. I am concerned, however, as to where the due process analysis will lead us and whether the concept of "irrebuttable presumption" may frustrate reasonable classification of employees for various purposes.

It may be some days before I have an opportunity to work on this. I will try not to hold you up unduly.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

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 Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72–777 AND 72–1129

1/15/74

Recirculated: _____

Cleveland Board of Education et al., Petitioners, 72–777 *v.* Jo Carol LaFleur et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
Susan Cohen, Petitioner, 72–1129 *v.* Chesterfield County School Board et al.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1974]

MR. JUSTICE POWELL, concurring in the result.

I concur in the Court's result, but I am unable to join its opinion. In my view these cases should not be decided on the ground that the mandatory maternity leave regulations impair any right to bear children or create an "irrebuttable presumption." It seems to me that equal protection analysis is the appropriate frame of reference.

These regulations undoubtedly add to the burdens of childbearing. But certainly not every government policy that burdens childbearing violates the Constitution. Limitations on the welfare benefits a family may receive that do not take into account the size of the family illustrate this point. See *Dandridge* v. *Williams*, 397 U. S. 471 (1970). Undoubtedly Congress could, as another example, constitutionally seek to discourage excessive population growth by limiting tax deductions for dependents. That would represent an intentional governmental effort to "penalize" childbearing. See *ante*, at 7. The regulations here do not have that purpose. Their deterrent impact is

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 6, 1973

Re: No. 72-777 - Cleveland Board of Education v. LaFleur
No. 73-1129 - Cohen v. Chesterfield County School Board

Dear Potter:

I anticipate circulating a dissent from your proposed opinions in these cases, and will try to get it out as soon as possible.

Sincerely,

WHR

Mr. Justice Stewart

Copies to 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 Powell

From: Rehnquist, J.

Circulated: 12/4/73

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-777 AND 72-1129

Cleveland Board of Education et al., Petitioners, 72-777 v. Jo Carol LaFleur et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Susan Cohen, Petitioner, 72-1129 v. Chesterfield County School Board et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

The Court rests its invalidation of the school regulations involved in these cases on the Due Process Clause of the Fourteenth Amendment, rather than on any claim of sexual discrimination under the Equal Protection Clause of that Amendment. My Brother STEWART thereby enlists the Court in another quixotic engagement in his apparently unending war on irrebutable presumptions. In this case we are told that although a regulation "requiring a termination of employment at some firm date during the last few weeks of pregnancy" (n. 13, opinion of the Court), might pass muster, the regulations here challenged requiring termination at the end of the fourth or fifth month of pregnancy violate due process of law.

As THE CHIEF JUSTICE pointed out in his dissent last year in *Vlandis* v. *Kline*, 412 U. S. —, "literally thousands of state statutes create classifications permanent in duration, which are less than perfect, as all legislative classifications are, and might be improved on by individualized determinations . . . ." 412 U. S., at 462. The Court's judicially expressed disenchantment with "irre-