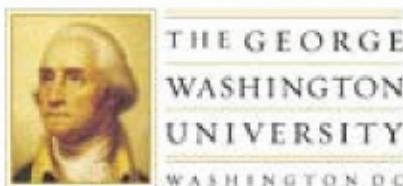


The Burger Court Opinion Writing Database

Jackson v. Metropolitan Edison Co.
419 U.S. 345 (1974)

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



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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 14, 1974

Dear Byron:

Please add me to your dissent in
73-5845, JACKSON v. METROPOLITAN EDISON.

William O. Douglas

Mr. Justice White

cc: The 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

1st DRAFT

From: White, J.

Circulated: 2-14-74

CATHERINE JACKSON, ETC. v. METROPOLITAN
EDISON COMPANY

Recirculated:

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

No. 73-5845. Decided December 3, 1973

MR. JUSTICE WHITE, dissenting.

Petitioner sued Metropolitan, under 42 U. S. C. § 1983, on behalf of herself and a class, when her electricity was cut off for nonpayment of outstanding charges, requesting damages and injunctive relief. She claimed a due process right to notice and a hearing before electrical services could be terminated. The District Court dismissed the complaint for the lack of state action and the Court of Appeals affirmed. 483 F. 2d 754 (CA3 1973).

Metropolitan is a state licensed monopoly whose rates are regulated by the Public Utility Commission. As part of the rate-setting procedure, the utility must file a tariff with the Commission which includes "a rule setting forth clearly the exact circumstances and conditions in which penalties are imposed" upon "customers for failure to pay bills promptly." It is certainly arguable that cut-offs pursuant to this rule constitute state action since Metropolitan acted under the "regulatory supervision" of the Public Utilities Commission, see *Public Utilities Commission v. Pollak*, 343 U. S. 451, 462 (1952), and the State has "significantly involved itself" in the actions of the utility. See *Reitman v. Mulkey*, 387 U. S. 369, 380 (1967); *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 173 (1972). In any event, the difficulty in defining the contours of requisite state action in these circumstances has led to conflicting results in the circuits. The Seventh Circuit, *Lucas v. Wisconsin Electric Power*

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

White, J. Circulated: _____

CATHERINE JACKSON, ETC. v. METROPOLITAN
EDISON COMPANYRecirculated: 2-15-74ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 73-5845. Decided February —, 1974

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

Petitioner sued Metropolitan, under 42 U. S. C. § 1983, on behalf of herself and a class, when her electricity was cut off for nonpayment of outstanding charges, requesting damages and injunctive relief. She claimed a due process right to notice and a hearing before electrical services could be terminated. The District Court dismissed the complaint for the lack of state action and the Court of Appeals affirmed. 483 F. 2d 754 (CA3 1973).

Metropolitan is a state licensed monopoly whose rates are regulated by the Public Utility Commission. As part of the rate-setting procedure, the utility must file a tariff with the Commission which includes "a rule setting forth clearly the exact circumstances and conditions in which penalties are imposed" upon "customers for failure to pay bills promptly." It is certainly arguable that cut-offs pursuant to this rule constitute state action since Metropolitan acted under the "regulatory supervision" of the Public Utilities Commission, see *Public Utilities Commission v. Pollak*, 343 U. S. 451, 462 (1952), and the State has "significantly involved itself" in the actions of the utility. See *Reitman v. Mulkey*, 387 U. S. 369, 380 (1967); *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 173 (1972). In any event, the difficulty in defining the contours of requisite state action in these circumstances has led to conflicting results in the circuits.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1974

Re: No. 73-5845 -- Catherine Jackson, Etc. v. Metropolitan
Edison Company

Dear Byron:

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference