

The Burger Court Opinion Writing Database

Goss v. Lopez

419 U.S. 565 (1975)

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
THE CHIEF JUSTICE

December 11, 1974

PERSONAL to JUSTICE ONLY

Re: 73-898 - Goss v. Lopez

Dear Harry, Lewis and Bill:

I have not studied Byron's memo in the
above but I urge that we hold off until a careful
analysis is made as to where it could take us.

Regards,

WZB

Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

I will defer any writing
until I see what Lewis
was in mind. For me Tinker
is the right answer. Hugo's dissent

✓

✓

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

CHAMBERS OF
THE CHIEF JUSTICE

January 17, 1975

Re: No. 73-898 - Goss v. Lopez

Dear Lewis:

Please join me in your dissent circulated

January 16.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 9, 1974

Dear Byron:

In 73-898, GOSS v. LOPEZ please
join me in your memo which I hope will
become the Court's opinion.

W.W.D.
William O. Douglas

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 10, 1974

RE: No. 73-898 Goss v. Lopez

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

December 16, 1974

RE: No. 73-898 - Goss v. Lopez

Dear Byron:

I joined the Memorandum and I also join the
opinion in the above.

Sincerely,

W. J. Brennan Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 9, 1974

Re: No. 73-898, Goss v. Lopez

Dear Byron,

I agree with your memorandum in this case.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 7, 1974

MEMORANDUM FOR THE CONFERENCE

Re: No. 73-898 - Goss v. Lopez

Because the Conference vote was somewhat fractionated, I was requested to submit an initial memorandum proposing a disposition in this case. The attached does so.


B.R.W.

10: 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: 12-7-77

Recirculated:

No. 73-898

Norval Goss et al., Appellees, On Appeal from the United
lants, States District Court for
v. the Southern District of
Eileen Lopez et al. Ohio.

[December —, 1974]

Memorandum of MR. JUSTICE WHITE.

This appeal by various administrators of the Columbus, Ohio, Public School System ("CPSS") challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

I

Ohio law, Rev. Code § 3313.64, provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. If he does, he must notify the suspended student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The board may reinstate the pupil following the hearing. No sim-

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 6, 9-12, 16-18

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

From: White, J.

Circulated: _____

Recirculated: 12-16-74

SUPREME COURT OF THE UNITED STATES

No. 73-898

Norval Goss et al., Appellees, v. Eileen Lopez et al. On Appeal from the United States District Court for the Southern District of Ohio.

[December —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal by various administrators of the Columbus, Ohio, Public School System ("CPSS") challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 27, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-2015, Boykins v. Fairfield Board of
Education

This case was held for Goss v. Lopez, No. 73-898, and Wood v. Strickland, No. 73-1285. It involves the permanent expulsion of students after a hearing at which the students were not permitted to confront and cross-examine witnesses except those who had only secondhand information. A procedural due process issue is pressed here. Strickland did not reach the procedural issue; and the minimum procedural requirements of Goss, which were satisfied here in any event, were imposed in the context of a brief suspension, not expulsion.

I would deny, primarily because petitioners appear to have agreed to the procedures employed, which were essentially those then required by CA 5's Dixon decision, the grandfather of the school due process cases (although less than fifteen years old). At least, the procedures to be employed at the hearing were explained in some detail to petitioners, and they made no objection at the time.


B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 10, 1974

Re: No. 73-898 -- Norval Goss et al. v. Eileen Lopez

Dear Byron:

I am in general agreement with your memorandum but might add an additional word or two later.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1975

Re: No. 73-898 -- Norval Goss et al. v. Eileen Lopez et al.

Dear Byron:

Please join me.

Sincerely,

J. M.
T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 16, 1975

Re: No. 73-898 - Goss v. Lopez

Dear Lewis:

Please join me in your dissent.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 9, 1974

No. 73-898 GOSS v. LOPEZ

MEMORANDUM TO THE CONFERENCE:

The memorandum circulated by Byron concludes that the Constitution requires notice and some form of hearing prior to every suspension of a student from a public school, except that prior notice need not be given in emergency situations.

As I find no basis for extending the Due Process Clause of the Constitution to encompass routine classroom discipline, and also as I believe this would be an unwarranted intrusion by the judiciary into an area best left to the discretion of professional educators I will circulate an opposing memorandum.

Although we are at the threshold of two weeks of argument, I hope to circulate something by the end of this week.

L. F. P.
L. F. P., Jr.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-898

Circulated: JAN 13 1974

Norval Goss et al., Appellants,
v.
Eileen Lopez et al.

On Appeal from the ~~United~~ States District Court for
the Southern District of
Ohio.

[January —, 1975]

MR. JUSTICE POWELL, dissenting.

The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days."¹ The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right: the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.²

¹ The Ohio Statute, § 3313.66 of the Ohio Rev. Code, actually is a limitation on the time-honored practice of school authorities determining themselves the appropriate duration of suspensions. The statute allows the superintendent or principal of a public school to suspend a pupil "for *not more than ten days . . .*" (italics supplied); and requires notification of the parent or guardian in writing within 24 hours of any suspension.

² Section 3313.66 also provides authority for the expulsion of pupils, but requires a hearing thereon by the school board upon request of a parent or guardian. The rights of pupils expelled are not involved

Wm. Douglas
OC 74

pp. 5, 15, 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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-898

Circulated: _____

Norval Goss et al., Appel- | On Appeal from the United
lants, | States District Court for
v. | the Southern District of
Eileen Lopez et al. | Ohio.

Recirculated: JAN 16 1974

[January —, 1975]

MR. JUSTICE POWELL, dissenting.

The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days."¹ The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right: the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.²

¹ The Ohio Statute, § 3313.66 of the Ohio Rev. Code, actually is a limitation on the time-honored practice of school authorities determining themselves the appropriate duration of suspensions. The statute allows the superintendent or principal of a public school to suspend a pupil "for *not more than ten days . . .*" (italics supplied); and requires notification of the parent or guardian in writing within 24 hours of any suspension.

² Section 3313.66 also provides authority for the expulsion of pupils, but requires a hearing thereon by the school board upon request of a parent or guardian. The rights of pupils expelled are not involved

, 19

Harris -

Forgive me
for troubling
my distinguished
and learned
colleagues in my
desire. I just
forgot the "form".
Please pass to
Bill Rehaguet. Thanks.

73-898

73-898

Harry — 1/21 10:15 P.M.

I have not decided
whether to speak
tomorrow. I'll probably
decide after hearing
Byron.

If I do speak,
I'd value your
judgment on the
approateness
of an attached draft.
I particularly do
not wish to offend
my friends (in the
majority, and therefore
do not want to over-
state my concern).

→ I'd be grateful if
you let me have your
views in the morning. Yours

February 12, 1975

No. 73-898 Goss v. Lopez

Dear Chief, Harry and Bill:

I thought you, as brothers who joined me in failing to see the light in the above case, might be interested in the enclosed articles from the Post.

The articles deal with the consequences, after four years, of Judge Wright's opinion requiring the "equalization" of salaries of all teachers in the manner described in the lead article. In my view, this experience well illustrates the adverse effect on public education - and on teachers and pupils - where the federal courts perceive and apply inflexible constitutional rules to the daily operation of the schools.

Sincerely,

The Chief Justice
Mr. Justice Blackmun
Mr. Justice Rehnquist

1fp/ss
Enc.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 14, 1975

Re: No. 73-898 - Goss v. Lopez

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,

WW

Mr. Justice Powell

Copies to the Conference