

The Burger Court Opinion Writing Database

Elrod v. Burns

427 U.S. 347 (1976)

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

June 21, 1976

Re: 74-1520 - Elrod v. Burns

Dear Bill:

Please show me as dissenting in the above.

Regards,

WE B

Mr. Justice Brennan

Copies to the Conference

City of _____, _____ 1970

Recirculated: _____

No. 74-1520

[June 28, 1976]

The Court's decision today represents a significant intrusion into the area of legislative and policy concerns—the sort of intrusion MR. JUSTICE BRENNAN has recently protested in other contexts. I therefore join MR. JUSTICE POWELL's dissenting opinion, and add a few words simply to emphasize an aspect that seems particularly important to me.

Only last week, in *National League of Cities v. Usery*, No. 74-878 (June 24, 1976), we took steps to arrest the denigration of States to a role comparable to the depart-

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

From: Mr. Justice Brennan

Circulated 6/2/76

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1520

Richard J. Elrod, etc., et al., Petitioners, v. John Burns et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[June —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case presents the question whether public employees who allege they were discharged or threatened with discharge solely because of their partisan political affiliation or nonaffiliation state acclaim for deprivation of constitutional rights secured by the First and Fourteenth Amendments.

I

Respondents brought this suit in the United States District Court for the Northern District of Illinois against petitioners, Richard J. Elrod, Richard J. Daley, The Democratic Organization of Cook County, and The Democratic County Central Committee of Cook County. Their complaint alleged that they were discharged or threatened with discharge solely for the reason that they were not affiliated with or sponsored by the Democratic Party. They sought declaratory, injunctive, and other relief for violations of the First and Fourteenth Amendments and 42 U. S. C. §§ 1983, 1985, 1986, 1988. Finding that the respondents failed to make an adequate showing of irreparable injury, the District Court denied their motion for a preliminary injunction and ultimately dismissed their complaint for failure to state a claim

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 74-1520 Elrod v. Burns

Byron has persuaded me that to decide this case it's not necessary to denigrate the role of the party system in the democratic process. Accordingly, I am deleting the last six lines on page 20 and the first two words in the first line on page 21, and am substituting the following after the citation of "United Public Workers v. Mitchell, supra" on page 20:

"But however important preservation of the two-party system or any system involving a fixed number of parties may or may not be, 22/ Williams v. Rhodes, supra, at 32, we are not persuaded, etc."

W.J.B. Jr.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Rehnquist
Mr. Justice Burger

1, 20, 21, 23, 24, 26

cc: Mr. Justice Brennan

Circ. 11/1

Recirculated: 6/25/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1520

Richard J. Elrod, etc.,
et al., Petitioners,
v.
John Burns et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN announced the judgment of the Court and delivered an opinion in which MR. JUSTICE WHITE and MR. JUSTICE MARSHALL joined.

This case presents the question whether public employees who allege they were discharged or threatened with discharge solely because of their partisan political affiliation or nonaffiliation state a claim for deprivation of constitutional rights secured by the First and Fourteenth Amendments.

I

Respondents brought this suit in the United States District Court for the Northern District of Illinois against petitioners, Richard J. Elrod, Richard J. Daley, The Democratic Organization of Cook County, and The Democratic County Central Committee of Cook County. Their complaint alleged that they were discharged or threatened with discharge solely for the reason that they were not affiliated with or sponsored by the Democratic Party. They sought declaratory, injunctive, and other relief for violations of the First and Fourteenth Amendments and 42 U. S. C. §§ 1983, 1985, 1986, 1988. Finding that the respondents failed to make an adequate showing of irreparable injury, the District Court denied their motion for a preliminary injunction and ultimately

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 7, 1976

No. 74-1520 - Elrod v. Burns

Dear Bill,

Enclosed herewith are copies
of a short opinion concurring in the
result that I have just sent to the
printer.

Sincerely yours,

PS.
[Signature]

Mr. Justice Brennan

Copies to the Conference

No. 74-1520, Elrod v. Burns
PS conc

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackman
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

MR. JUSTICE STEWART, concurring in the result.

Although I cannot join the Court's wide-ranging opinion,
I can and do concur in its judgment.

This case does not require us to consider the broad contours of the so-called patronage system, with all its variations and permutations. In particular, it does not require us to consider the constitutional validity of a system that confines the hiring of some governmental employees to those of a particular political party, and I would intimate no views whatever on that question.

The single substantive question involved in this case is whether a non-policy making, non-confidential government employee

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

1: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1520

Richard J. Elrod, etc., et al., Petitioners, v. John Burns et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
----------------------------------------------------------------------------	---	--------------------------------------------------------------------------------------------

[June —, 1976]

MR. JUSTICE STEWART, concurring in the result.

Although I cannot join the Court's wide-ranging opinion, I can and do concur in its judgment.

This case does not require us to consider the broad contours of the so-called patronage system, with all its variations and permutations. In particular, it does not require us to consider the constitutional validity of a system that confines the hiring of some governmental employees to those of a particular political party, and I would intimate no views whatever on that question.

The single substantive question involved in this case is whether a nonpolicy making, nonconfidential government employee can be discharged from a job that he is satisfactorily performing upon the sole ground of his political beliefs. I agree with the Court that he cannot. See *Perry v. Sindermann*, 408 U. S. 593, 597-598.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: No. 74-1520 - Elrod v. Burns

Dear Bill:

Please join me in your opinion as amended.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1976

Re: No. 74-1520 -- Richard J. Elrod v. John Burns

Dear Bill:

Please join me.

Sincerely,

T.M.
T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1976

Re: No. 74-1520 - Elrod v. Burns

Dear Potter:

Would you please add my name to your opinion
concurring in the result.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1976

No. 74-1520 Elrod v. Burns

Dear Bill:

In due time I will join a dissent to your opinion in the above case.

If none of our Brothers volunteers to write a dissent, I will.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

lfp/ss 6/23/76

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

From: Mr. Justice Powell

Circulated: ~~MM 22 1976~~

Recirculated: _____

No. 74-1520 ELROD v. BURNS

MR. JUSTICE POWELL, dissenting.

The Court holds unconstitutional a practice as old as the Republic, a practice which has contributed significantly to the democratization of American politics. This decision is urged on us in the name of First Amendment rights, but in my view the judgment neither is constitutionally required nor serves the interest of a representative democracy. It also may well disserve - rather than promote - core values of the First Amendment. I therefore dissent.

I.

The Cook County Sheriff's Office employs approximately 3,000 people. Roughly half of these employees are "merit" employees given various protections from discharge. The other half of the employees have no such protection. Customary Illinois political practice has allowed such "non-merit" positions to be awarded on "patronage" grounds.

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 26 1976

1, 5, 6, 7, 8, 12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No 74-1520

Richard J. Elrod, etc., et al., Petitioners,	} On Writ of Certiorari to the United States Court of Ap- peals for the Seventh Circuit.
v.	
John Burns et al.	

[June 28, 1976]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

The Court holds unconstitutional a practice as old as the Republic, a practice which has contributed significantly to the democratization of American politics. This decision is urged on us in the name of First Amendment rights, but in my view the judgment neither is constitutionally required nor serves the interest of a representative democracy. It also may well disserve—rather than promote—core values of the First Amendment. I therefore dissent.

I

The Cook County Sheriff's Office employs approximately 3,000 people. Roughly half of these employees are "merit" employees given various protections from discharge. The other half of the employees have no such protection. Customary Illinois political practice has allowed such "non-merit" positions to be awarded on "patronage" grounds. This tradition has entitled newly elected officeholders to replace incumbent nonmerit employees with patronage appointments.

Petitioner Richard Elrod, a Democrat, was elected Sheriff of Cook County in 1970, succeeding a Republican. Consistently with Illinois practice, he dismissed a number of incumbent employees because they lacked Democratic affiliation and were unable to secure Demo-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1976

Re: No. 74-1520 - Elrod v. Burns

Dear Bill:

I shall await Lewis' dissent in this case.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

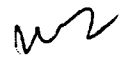
June 25, 1976

Re: No. 74-1520, Elrod v. Burns

Dear Lewis:

Please join me in your dissent in the above case.

Sincerely,



Mr. Justice Powell

cc: The Conference