

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,

WEB

Mr. Justice Brennan

Copies to the Conference

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
 Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Sutherland
Mr. Justice Brandeis
Mr. Justice Cardozo
Mr. Justice Stone
Mr. Justice Holmes
Mr. Justice Taft
Mr. Justice Stone

100-5100
JUN 10 1970
CIRCUIT BOARD

1st DRAFT

Recirculated: _____

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 28, 1976]

MR. CHIEF JUSTICE BURGER, dissenting.

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.

The Illinois Legislature has pointedly decided that roughly half of the Sheriff's staff shall be made up of tenured career personnel and the balance left exclusively to the choice of the elected head of the department. The Court strains the rational bounds of First Amendment doctrine and runs counter to longstanding practices that are part of the fabric of our democratic system to hold that the Constitution *commands* something it has not been thought to require for 185 years. For all that time our system has wisely left these matters to the States and, on the federal level, to the Congress. The Court's action is a classic example of trivializing constitutional adjudication—a function of the highest importance in our system.

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 Stevens

From: Mr. Justice BRENNAN

Circulated 6/2/76

Recirculated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1520

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

[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 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 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.

1, 20, 21, 23, 24, 26

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Frankfurter
Mr. Justice Harlan
Mr. Justice Stone

如上所述，从1950年到1953年，中国在抗美援朝战争中，共毙伤俘敌军100多万人，其中美国军50多万人。

Circumstances

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,



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

From: Mr. Justice Stewart

Circulated: [unclear]

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 B. J. C. B.
Mr. Justice White
Mr. Justice Mahon
Mr. Justice B. J. C. B.
Mr. Justice P. J. P.
Mr. Justice R. J. R.
Mr. Justice S. J. S.

From: Mr. Justice S.

Circulated: _____

1. *Leucosia* (Leucosia) *leucosia* (L.) (Fig. 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,

Byron

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,

JM.
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

1fp/ss

cc: The Conference

1fp/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 29 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

1, 5, 6, 78, 12

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 26 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

 No 74-1520

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

[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,

WZ

Mr. Justice Powell

cc: The Conference