

# The Burger Court Opinion Writing Database

## *Rizzo v. Goode*

423 U.S. 362 (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

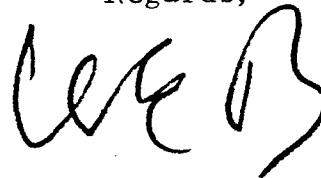
January 20, 1976

Re: 74-942 - Rizzo v. Goode

Dear Bill:

I now join your opinion in the above. Sorry to be so  
long on it.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 2, 1976

RE: No. 74-942 Rizzo v. Goode, et al.

Dear Harry:

Thurgood, you and I dissented in the above. Would you find it convenient to take on the writing of a dissent to Bill Rehnquist's circulated opinion?

Sincerely,



Mr. Justice Blackmun

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.


January 13, 1976

RE: No. 74-942 Rizzo v. Goode, et al.

Dear Harry:

Please join me in your fine dissenting opinion.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

No. 74-942

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 4, 1976

Dear Harry:

I think this hits the nail on the  
head.

Sincerely,



Mr. Justice Blackmun

Encl.

\* 2/4/76 - Sent copy of 1/29/76 article in The  
Philadelphia Inquirer - "Supreme Court  
won't curb police abuses"  
[Re: No. 74-942 - Rizzo v. Goode]

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 7, 1976

Re: No. 74-942, Rizzo v. Goode

Dear Bill,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 12, 1976

Re: No. 74-942 - Rizzo v. Goode

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 13, 1976

Re: No. 74-942 -- Frank L. Rizzo v. Gerald G. Goode

Dear Harry:

Please join me in your dissenting opinion.

Sincerely,

*T.M.*

T. M.

Mr. Justice Blackmun

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

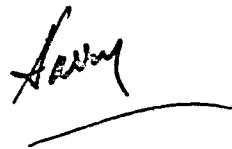
January 5, 1976

Re: No. 74-942 - Rizzo v. Goode, et al.

Dear Bill:

My vote, as your records will show, was to affirm, but with a question mark. Nevertheless, I shall be glad to try my hand at a brief dissent. If it doesn't work, I shall let you know.

Sincerely,



Mr. Justice Brennan

cc: Mr. Justice Marshall ✓

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Blackmun

No. 74-942

Circulated: 1/13/76

Recirculated: \_\_\_\_\_

Frank L. Rizzo et al.,  
 Petitioners,  
 v.  
 Gerald G. Goode et al. } On Writ of Certiorari to the  
 United States Court of Ap-  
 peals for the Third Circuit.

[January —, 1976]

MR. JUSTICE BLACKMUN, dissenting.

To be sure, federal court intervention in the daily operation of a large city's police department, as the Court intimates, is undesirable and to be avoided if at all possible. The Court appropriately observes, however, *ante*, pp. 3-4, that what the Federal District Court did here was to engage in a careful and conscientious resolution of often sharply conflicting testimony and to make detailed findings of fact, now accepted by both sides, that attack the problem that is the subject of the respondents' complaint. The remedy was one evolved with the defendant officials' assent, reluctant though that assent may have been, and it was one that the Police Department concededly could live with. Indeed, the District Court, in its memorandum of October 5, 1973, stated that "the resolution of all the disputed items was more nearly in accord with the defendants' position than with the plaintiffs' position," and that the relief contemplated by the earlier order of March 14, 1973, see 357 F. Supp. 1289 (ED Pa.), "did not go beyond what the defendants had always been willing to accept." App. 190a. No one, not even this Court's majority, disputes the apparent efficacy of the relief or the fact that it effectuated a betterment in the system and should serve to lessen the number of instances of deprivation of

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 8, 1976

No. 74-942 Rizzo v. Goode

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Mr. Justice Rehnquist

Circulated: 13-31-75

Recirculated: \_\_\_\_\_

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-942

Frank L. Rizzo et al.,	} On Writ of Certiorari to the
Petitioners,	
v.	
Gerald G. Goode et al.	United States Court of Ap- peals for the Third Circuit.

[January —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The District Court for the Eastern District of Pennsylvania, after parallel trials of separate actions<sup>1</sup> filed

<sup>1</sup> The complaint in the first action, filed in February 1970 and styled *Goode v. Rizzo*, was brought by respondent Goode and two other individuals. The second, filed in September 1970 and styled *COPPAR v. Tate*, was brought by 21 individuals and four organizations; the Council of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR), an unincorporated association composed of some 32 constituent community organizations; the Southern Christian Leadership Conference, whose principal office is in Atlanta, Georgia; and the Black Panther Party and the Young Lords Party, both unincorporated associations of black citizens and citizens of Spanish origin, respectively. The latter two groups, of which some of the individual complainants in COPPAR were members, were ultimately dismissed as parties by the District Court for failure to submit to discovery. Both complaints named as defendants those officials then occupying the offices of Mayor, City Managing Director (who supervises and, with the Mayor's approval, appoints the Police Commissioner), and the Police Commissioner, who has direct supervisory power over the department. Two other police supervisors subordinate to the Commissioner were also named defendants. Both actions were permitted to proceed as class actions, with the individual respondents representing all residents of Philadelphia and an "included" class of all Black residents of that city. For a thorough account of the procedural background of this case,

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 18, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Rizzo v. Goode, No. 74-942

Two petitions for certiorari have been held for this case, both arising out of the same CA 7 judgment. Conlisk v. Calvin, No. 75-606; Afro-American Patrolmen's League v. Conlisk, No. 75-809.

Seven individuals and three organizations<sup>\*/</sup> sued various individual policemen, the Chicago Police Superintendent and other police officials, and the City of Chicago. The individual plaintiffs sought damages against the individual policemen on the basis of specified incidents of misconduct; all plaintiffs sought injunctive relief against the police officials and the City, alleging that the incidents were representative of those "recurring over the course of many years." They claimed continuing violations of their "right" to be free from unconstitutional police misconduct, in that the official defendants "have . . . followed a course of conduct that condones, and in effect encourages such abusive misconduct." Affirmative injunctive relief was demanded - primarily an order revamping the department's internal disciplinary machinery.

As relevant here, the District Court ruled: (1) the prayer for injunctive relief against the official defendants and the City was dismissed as non-justiciable (2) the three organizational plaintiffs had no standing to seek such non-justiciable relief. Only the seven individual damage actions remained. Reversing, the Court of Appeals held: (1) the

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<sup>\*/</sup>Concerned Citizens for Police Reform (CCPR); Chicago Urban League (CUL); and Afro-American Patrolmen's League (AAPL).

injunction action was justiciable (2) on the assumption that plaintiffs prove their allegations, they will have established entitlement to injunctive relief, which could include a decree establishing "procedures to assure proper processing of citizen complaints concerning police misconduct". (3) CCPR and CUL have standing because, inter alia, their members "continue to be in danger" of police misconduct; some of the individual plaintiffs were allegedly members of CCPR (4) AAPL cannot be a plaintiff since the relief sought would directly affect its policemen members.

In No. 75-606, petitioner police officials track the arguments made by petitioners in Rizzo. It is obvious from reading CA 7's opinion that its analysis and use of case law from this Court and the CAs parallel that of CA 3 in Rizzo. Since this is not a class action, Part II A of our opinion casts considerable doubt on whether, as to the prayer for injunctive relief, any of the individual or organizational plaintiffs have the "requisite 'personal stake in the outcome'." Slip opin. at 9. Secondly, given that proof of the present allegations would establish no more than the facts as found by the District Court in Rizzo, CA 7's approval of affirmative equitable relief running against the police department cannot be squared with Parts II B & C of our opinion. Judge Fullam's order in Rizzo was based not on any affirmative action on the part of the Philadelphia police officials but on a finding that by their inaction they had condoned the police misconduct. No. 75-606, therefore, should be a grant, vacate, and remand for reconsideration in light of Rizzo.

In No. 75-809, a conditional petition, AAPL contests CA 7's affirmance of its dismissal as a plaintiff. It should be denied.

Sincerely,

