

The Burger Court Opinion Writing Database

Tennessee v. Dunlap

426 U.S. 312 (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 7, 1976

Re: 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Please join me in your circulation of June 4.

Regards,

W B

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1976

RE: No. 75-95 Tennessee v. Dunlap

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1976

Re: No. 75-95, Tennessee v. Dunlap

Dear Thurgood,

I agree with all of your opinion except the last paragraph. It seems to me that the question discussed in that paragraph was not raised in the respondent's complaint, and was, accordingly, not considered by the District Court or the Court of Appeals. Moreover, unless my recollection is faulty, the suggestion that a remand to the District Court for the purpose of allowing the respondent to amend his complaint was not mentioned by anybody during our Conference discussion.

I would have no objection to a footnote mention of the points made in the final paragraph and in footnote 4, but I cannot agree to the final paragraph as now written.

Sincerely yours,

P.S.
P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1976

No. 75-95 - Tennessee v. Dunlap

Dear Thurgood,

I am glad to join your opinion
for the Court as recirculated today.

Sincerely yours,

PS,
P

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1976

Re: No. 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Except for the last two paragraphs, I join
your opinion.

Sincerely,



Mr. Justice Marshall

Copies to Conference

75-95 Tennessee v. Dunlap

MR. JUSTICE MARSHALL delivered
Respondent brought this action in the
Court for the Eastern District of Tennessee
of his employment as a technician with the
as violative of the Due Process Clause of the
Petitioners are the defendants below -- the
Governor, the Tennessee Air National Guard
the Tennessee Air National Guard.

The National Guard Technicians Act of 1960 provides generally
that a National Guard technician, who is a full-time civilian employee
of the National Guard, must be a member of the National Guard, ^{1/} and
that a technician who is separated from the Guard "shall be promptly
separated from his technician employment." 32 U.S.C. §§ 709(b), (e)(3).
The same section of the Act provides that "a technician may, at any time,
be separated from his technician employment for cause." § 709(e)(3).
On December 8, 1972, respondent was discharged from the Tennessee
Air National Guard for the stated reason that his term of enlistment
had expired. Five days later respondent was notified by his commander
that his employment as a technician would be terminated in 30 days
because he was no longer a member of the Guard.

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

From: Mr. Justice Marshall

Circulated: JUN 2 197

Recirculated: _____

75-95 Tennessee v. Dunlap

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent brought this action in the United States District Court for the Eastern District of Tennessee, challenging the termination of his employment as a technician with the Tennessee Air National Guard as violative of the Due Process Clause of the Fourteenth Amendment. Petitioners are the defendants below -- the State of Tennessee and its Governor, the Tennessee Air National Guard, and various officials of the Tennessee Air National Guard.

The National Guard Technicians Act of 1968 provides generally that a National Guard technician, who is a full-time civilian employee of the National Guard, must be a member of the National Guard,^{1/} and that a technician who is separated from the Guard "shall be promptly separated from his technician employment." 32 U. S. C. §§ 709(b), (e)(1). The same section of the Act provides that "a technician may, at any time, be separated from his technician employment for cause." § 709(e)(3). On December 8, 1972, respondent was discharged from the Tennessee Air National Guard for the stated reason that his term of enlistment had expired. Five days later respondent was notified by his commander that his employment as a technician would be terminated in 30 days because he was no longer a member of the Guard.

2, 5, notes 2+3

75-95 Tennessee v. Dunlap

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent brought this action in the United States District Court for the Eastern District of Tennessee, challenging the termination of his employment as a technician with the Tennessee Air National Guard as violative of the Due Process Clause of the Fourteenth Amendment. Petitioners are the defendants below -- the State of Tennessee and its Governor, the Tennessee Air National Guard, and various officials of the Tennessee Air National Guard.

The National Guard Technicians Act of 1968 provides generally that a National Guard technician, who is a full-time civilian employee of the National Guard, must be a member of the National Guard, ^{1/} and that a technician who is separated from the Guard "shall be promptly separated from his technician employment." 32 U. S. C. §§ 709(b), (e)(1). The same section of the Act provides that "a technician may, at any time, be separated from his technician employment for cause." § 709(e)(3). On December 8, 1972, respondent was discharged from the Tennessee Air National Guard for the stated reason that his term of enlistment had expired. Five days later respondent was notified by his commander that his employment as a technician would be terminated in 30 days because he was no longer a member of the Guard.

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

From: Mr. Justice Marshall

Circulated:

Recirculated: JUN 4 1976

Dunlap

E MARSHALL delivered the opinion of the Court.
brought this action in the United States District
Court in District of Tennessee, challenging the termination
of respondent's employment as a technician with the Tennessee Air National Guard
under the Due Process Clause of the Fourteenth Amendment.
The defendants below -- the State of Tennessee and its
Tennessee Air National Guard, and various officials of
the Tennessee Air National Guard.

The National Guard Technicians Act of 1968 provides generally
that a National Guard technician, who is a full-time civilian employee
of the National Guard, must be a member of the National Guard, ^{1/} and
that a technician who is separated from the Guard "shall be promptly
separated from his technician employment." 32 U.S.C. §§ 709(b), (e)(1).
The same section of the Act provides that "a technician may, at any time,
be separated from his technician employment for cause." § 709(e)(3).
On December 8, 1972, respondent was discharged from the Tennessee
Air National Guard for the stated reason that his term of enlistment
had expired. Five days later respondent was notified by his commander
that his employment as a technician would be terminated in 30 days
because he was no longer a member of the Guard.

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

From: Mr. Justice Marshall

Circulated: _____

Recirculated: JUN 7th 1976

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-95

State of Tennessee et al.,
Petitioners,
v.
Billy Don Dunlap. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent brought this action in the United States District Court for the Eastern District of Tennessee, challenging the termination of his employment as a technician with the Tennessee Air National Guard as violative of the Due Process Clause of the Fourteenth Amendment. Petitioners are the defendants below—the State of Tennessee and its Governor, the Tennessee Air National Guard, and various officials of the Tennessee Air National Guard.

The National Guard Technicians Act of 1968 provides generally that a National Guard technician, who is a full-time civilian employee of the National Guard, must be a member of the National Guard,¹ and that a technician

¹ The Secretary of the Army or the Air Force, in this case the Air Force, may by regulation exempt technicians from the requirement of membership in the Guard. 32 U. S. C. § 709 (b). The Senate and House Committee Reports contemplated the exemption of about 5% of the technicians—principally secretaries, clerk-typists, and security guards. H. R. Rep. No. 1823, 90th Cong., 2d Sess. 6 (1968); S. Rep. N. 1446, 90th Cong., 2d Sess. 5 (1968). Respondent has not been exempted from the requirement of Guard membership.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1976

Re: No. 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Like Byron, I could join your opinion except for the last two paragraphs.

I would feel happier, too, if Orloff v. Willoughby, 345 U.S. 83, and, particularly, Turner v. Egan, 414 U.S. 1105, had been cited, for I thought both held some authority for this case. But you are the author, and you may have found good reasons not to cite.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Please join me in your recirculation of June 4.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1976

No. 75-95 Tennessee v. Dunlap

Dear Thurgood:

I am happy to join your opinion except for the last paragraph. As to that, I agree with Potter's recollection that we did not discuss the possibility of a remand to allow respondent to amend his complaint.

Even if we had considered a remand for that purpose I would have voted against it. This would be merely an invitation to prolong a meritless litigation.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 7, 1976

No. 75-95 Tennessee v. Dunlap

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

✓
June 3, 1976

Re: No. 75-95 - Tennessee v. Dunlap

Dear Thurgood:

I feel the same way about the last paragraph of your opinion as do Potter and Lewis. If it were changed to accommodate their views, I would be happy to join it.

Sincerely,

W W

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1976

Re: No. 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Please join me.

Sincerely,

W.W.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1976

Re: 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Except for the last two paragraphs, I join your opinion.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1976

Re: 75-95 - Tennessee v. Dunlap

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference