

The Burger Court Opinion Writing Database

Philadelphia v. New Jersey
430 U.S. 141 (1977)

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 19, 1977

RE: 75-1150 - City of Philadelphia v. New Jersey

MEMORANDUM TO THE CONFERENCE:

This case will be on the Conference for Monday,
January 24, since the supplemental briefs have been
received and there has been time for review.

WPB

Regards,

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

CHAMBERS OF
THE CHIEF JUSTICE

February 10, 1977

RE: 75-1150 - City of Philadelphia v. New Jersey

Dear Lewis:

I join your dissent, February 9.

Regards,



Mr. Justice Powell

Copies to the Conference

1
 WJS
 Japue with
 Morgan Clegg
 2/27/77

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: 1/27/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1150

City of Philadelphia et al.,
 Appellants,
 v.
 State of New Jersey et al. } On Appeal from the Supreme
 Court of New Jersey.

[February —, 1977]

PER CURIAM.

This suit challenges the constitutionality of a New Jersey statute prohibiting any person from bringing into New Jersey "any solid or liquid waste which originated or was collected outside the State," except garbage to be fed to swine. New Jersey Pub. L. 1973, c. 363. The New Jersey Supreme Court held that the act was not pre-empted by a federal statute addressing questions of waste disposal, the Solid Waste Disposal Act of 1965, 42 U. S. C. § 3251 *et seq.*, and was not unconstitutional as discriminatory against or placing an undue burden on interstate commerce. *City of Philadelphia et al. v. State of New Jersey et al.*, 68 N. J. 451 (1975). We noted probable jurisdiction on April 5, 1976, 425 U. S. 910 (1976).

On October 21, 1976, the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 42 U. S. C. § 6901 *et seq.* became law. The parties at the Court's request supplemented their briefs to address the question of the impact of the new federal statute on the New Jersey Act. Appellants argue that the Act displaces the New Jersey law, and appellees argue that it does not pre-empt or in any way undercut the validity of the New Jersey legislation. While federal pre-emption of state statutes is, of course, ultimately a question under the Supremacy Clause, U. S. Const., Art.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 28, 1977

No. 75-1150, Philadelphia v. New Jersey

Dear Lewis,

Please add my name to your dissenting
opinion.

Sincerely yours,

PS

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

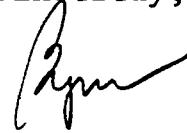
January 28, 1977

Re: No. 75-1150 - Philadelphia v. New Jersey

Dear Bill:

I agree.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 31, 1977

Re: No. 75-1150 - Philadelphia v. New Jersey

Dear Bill:

I agree with your Per Curiam.

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

January 31, 1977

Re: No. 75-1150 - Philadelphia v. New Jersey

Dear Bill:

Please join me in your proposed per curiam.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

V

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: JAN 28 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1150

City of Philadelphia et al.,
Appellants,
v.
State of New Jersey et al. } On Appeal from the Supreme
Court of New Jersey.

[February —, 1977]

MR. JUSTICE POWELL, dissenting.

The Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 42 U. S. C. § 6901 *et seq.* evidences a federal concern with the growing problem of waste disposal in this country. This complex statute attempts to deal with this problem in a variety of ways. Because the impact of the statute will depend in part on the regulations promulgated under it, generalizations at this time as to the effect of the statute should be made with caution. But I do think that it is abundantly clear from the text of the statute and from its legislative history that Congress did not intend to preempt state laws such as the one at issue here. In its report on the statute the House Committee on Interstate and Foreign Commerce recognized the existence of state laws similar to this New Jersey law. H. R. Rep. No. 94-1491, 94th Cong., 2d Sess., 3, 10. The report explicitly disclaimed any pre-emptive intention.

"It is the Committee's intention that federal assistance should be an incentive for state and local authorities to act to solve the discarded materials problem. At this time federal preemption of this problem is undesirable, inefficient, and damaging to local initiative." *Id.*, at 33.

In view of this express disclaimer, I do not understand how the Court can assume that pre-emption remains as an open question.

P. 'stylistic changes'

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:

FEB 9 1977

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 75-1150

City of Philadelphia et al.,
Appellants,
v.
State of New Jersey et al. } On Appeal from the Supreme
Court of New Jersey.

[February —, 1977]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 42 U. S. C. § 6901 *et seq.* evidences a federal concern with the growing problem of waste disposal in this country. This complex statute attempts to deal with this problem in a variety of ways. Because the impact of the statute will depend in part on the regulations promulgated under it, generalizations at this time as to the effect of the statute should be made with caution. But I do think it is abundantly clear from the text of the statute and from its legislative history that Congress did not intend to preempt state laws such as the one at issue here. In its report on the statute the House Committee on Interstate and Foreign Commerce recognized the existence of state laws similar to this New Jersey law. H. R. Rep. No. 94-1491, 94th Cong., 2d Sess., 3, 10. The report explicitly disclaimed any preemptive intention.

"It is the Committee's intention that federal assistance should be an incentive for state and local authorities to act to solve the discarded materials problem. At this time federal preemption of this problem is undesirable, inefficient, and damaging to local initiative." *Id.*, at 33.

In view of this express disclaimer, I do not understand how the Court can assume that pre-emption remains an open question.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 31, 1977

Re: No. 75-1150 - Philadelphia v. New Jersey

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,

W.W.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 31, 1977

Re: 75-1150 - Philadelphia v. New Jersey

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference