

The Burger Court Opinion Writing Database

Vorchheimer v. School District of Philadelphia

430 U.S. 703 (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

March 9, 1977

Re: 76-37 - Vorchheimer v. School District of
Philadelphia

MEMORANDUM TO THE CONFERENCE:

In today's special Conference, the vote on the merits remained as it was at the March 4 Conference.

I therefore propose that notwithstanding Bill Rehnquist's "disclaimer," we defer consideration until his current views are known. In my view, action by an equally divided Court would be open to valid criticism as an institutional failure to meet our obligations. However, should that be the ultimate result, I will write my view on why the absence of one Justice should lead to reargument.

Obviously, we did not take this case to evaluate findings against the record but only to decide whether gender separated equal schools are "inherently unequal," and that issue should neither be evaded nor delayed.

Regards,

WCB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1977

Re: 76-37 - Vorchheimer v. School District of Philadelphia

MEMORANDUM TO THE CONFERENCE:

I am not sure I have a clear picture on the motion for reargument.

In the posture that the case stands now, it seems to me that there would be genuine institutional "negatives" in having it reaffirmed by an equally divided Court even though I agree with the results reached by that process.

It is one thing to affirm a case of significance with an equally divided Court when there is nothing we can do about it (as in the 1969 Term with only eight Justices), but it is quite another to follow that course when it will merely require one hour of additional time at the final oral argument session, at which time Bill Rehnquist will be able to participate.

I have an uneasy feeling that the DeFunis case will be linked with this -- erroneously, of course; but it may appear even to some thoughtful people that the Court had evaded the issue at a time when the addition of one hour to the argument session would produce a definitive result.

We should act on this promptly because the parties should be notified very quickly if it is to be set for reargument in the second week of our final session.

Regards,


I will place this on the agenda
for Friday. WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 18, 1977


RE: 76-37 - Vorchheimer v. School District
of Philadelphia

Dear Harry:

Your memo of today re the above is what I tried and failed to get five votes for last Friday. We will look "bad" and the four who voted to reargue need not waive the ancient right to say "What did we tell you"!

However, until the Court gives me two votes as in ancient English law when a court is equally divided, I find it difficult to cope with four unregenerate, unreconstructed "rebels"! In which case I conduct as orderly a retreat as possible!

Regards,



Mr. Justice Blackmun

Copies to the Conference

To: Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice
 Mr. Justice

From: The Chief Justice

Circulated: APR 18 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-37

Susan Lynn Vorchheimer, by her parents Bert and Carol Vorchheimer, etc., Petitioner, v. School District of Philadelphia et al.	}	On Writ of Certio- rari to the United States Court of Appeals for the Third Circuit.
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[April 19, 1977]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE REHNQUIST took no part in the consideration
 or decision of this case.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 18, 1977

RE: No. 76-37 Vorchheimer v. School District Philadelphia

Dear Chief:

I agree with the Per Curiam you have prepared in the
above.

Sincerely,



The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 18, 1977

Re: No. 76-37 - Vorchheimer v.
School District of Philadelphia et al.

Dear Chief,

The Per Curiam you have circulated
today seems correct to me.

Sincerely yours,

P.S.
✓

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 18, 1977

Re: No. 76-37 - Vorchheimer v. Philadelphia

Dear Chief:

Although I thought the case should be argued, the per curiam you have circulated seems to reflect the Conference vote.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1977

Re: No. 76-37, Vorchheimer v. School District of Philadelphia

Dear Chief:

I agree with your Per Curiam.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

✓

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1977

Re: No. 76-37 - Vorchheimer v. School District
of Philadelphia

Dear Chief:

As at conference, my vote is to reargue. I feel the Court will look bad, or at least awkward, if, under the circumstances that attend this case, we affirm by an equally divided vote.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1977

No. 76-37 Vorchheimer v. School District
of Philadelphia

Dear Chief:

As I view the case as involving unique facts, I am content to "let the chips" lie where they fell.

Your Per Curiam has my approval.

Sincerely,

L. F. Powell

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

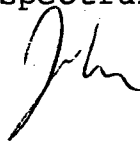
April 18, 1977

Re: 76-37 - Vorchheimer v. School Dist. of
Philadelphia

Dear Chief:

My vote is not to reargue.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS


April 19, 1977

Re: 76-37 - Vorchheimer v. School District
of Philadelphia

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference