

The Burger Court Opinion Writing Database

New York v. Cathedral Academy
434 U.S. 125 (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

November 30, 1977

RE: 76-616 - New York v. Cathedral Academy

Dear Potter:

Please have me shown in the same posture as
Bill Rehnquist.

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 16, 1977

RE: No. 76-616 State of New York v. Cathedral Academy

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

*AS
Please see me*

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: NOV 16 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

Join ??

MR. JUSTICE STEWART delivered the opinion of the Court.

In April of 1972 a three-judge United States District Court for the Southern District of New York declared unconstitutional New York's Mandated Services Act, 1970 N. Y. Laws c. 138, which authorized fixed payments to nonpublic schools as reimbursement for the cost of certain recordkeeping and testing services required by state law. *Committee for Public Education and Religious Liberty v. Levitt*, 342 F. Supp. 439. The Court's order permanently enjoined any payments under the Act, including reimbursement for expenses that schools had already incurred in the last half of the 1971-1972 school year.¹ This Court subsequently affirmed that judgment. *Levitt v. Committee for Public Education*, 413 U. S. 472.

In June of 1972 the New York State Legislature responded to the District Court's order by enacting Chapter 996 of the 1972 Laws of N. Y. The Act "recognize[d] a moral obligation to provide a remedy whereby . . . schools may recover the complete amount of expenses incurred by them prior to June

¹ The order permanently enjoined "all persons acting for or on behalf of the State of New York from making any payments or disbursements out of State funds pursuant to the provisions of Chapter 138 of the New York Laws of 1970, in payment for or reimbursement of any moneys heretofore or hereafter expended by nonpublic elementary and secondary schools."

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 121

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: _____

2nd DRAFT

Recirculated: NOV 21 1977

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

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In April of 1972 a three-judge United States District Court for the Southern District of New York declared unconstitutional New York's Mandated Services Act, 1970 N. Y. Laws ch. 138, which authorized fixed payments to nonpublic schools as reimbursement for the cost of certain recordkeeping and testing services required by state law. *Committee for Public Education and Religious Liberty v. Levitt*, 342 F. Supp. 439. The Court's order permanently enjoined any payments under the Act, including reimbursement for expenses that schools had already incurred in the last half of the 1971-1972 school year.¹ This Court subsequently affirmed that judgment. *Levitt v. Committee for Public Education*, 413 U. S. 472.

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¹ The order permanently enjoined "all persons acting for or on behalf of the State of New York from making any payments or disbursements out of State funds pursuant to the provisions of Chapter 138 of the New York Laws of 1970, in payment for or reimbursement of any moneys heretofore or hereafter expended by nonpublic elementary and secondary schools." Judgment of the District Court for the Southern District of New York, 70 Civ. 3251 (June 1, 1972).

SEE PAGES: 9

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: _____

Recirculated: NOV 23 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

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SEE PAGES: 2

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: _____

4th DRAFT

Recirculated: NOV 3 0 1977

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9

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: _____

5th DRAFT

Recirculated: DEC 2 1977

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

In April of 1972 a three-judge United States District Court for the Southern District of New York declared unconstitutional New York's Mandated Services Act. 1970 N. Y. Laws ch. 138, which authorized fixed payments to nonpublic schools as reimbursement for the cost of certain recordkeeping and testing services required by state law. *Committee for Public Education and Religious Liberty v. Levitt*, 342 F. Supp. 439. The Court's order permanently enjoined any payments under the Act, including reimbursement for expenses that schools had already incurred in the last half of the 1971-1972 school year.¹ This Court subsequently affirmed that judgment. *Levitt v. Committee for Public Education*, 413 U. S. 472.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 22, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-616 - New York v. Cathedral Academy

I am having printed the following statement in this case:

Mr. Justice White, dissenting.

Because the Court continues to mis-construe the First Amendment in a manner that discriminates against religion and is contrary to the fundamental educational needs of the country, I dissent here as I have in Lemon v. Kurtzman, 403 U.S. 602 (1971); Committee for Public Education v. Nyquist, 413 U.S. 756 (1973); Levitt v. Committee, 413 U.S. 472 (1973); Meek v. Pittenger, 421 U.S. 349 (1975, and Wolman v. Walter, 45 USLW 4861 (1977).



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

From: Mr. Justice White

1st DRAFT

Circulated: 11-28-77

SUPREME COURT OF THE UNITED STATES

No. 76-616

State of New York, Appellant,
v.
Cathedral Academy. } On Appeal from the Court of
Appeals of New York.

[November —, 1977]

MR. JUSTICE WHITE, dissenting.

Because the Court continues to misconstrue the First Amendment in a manner that discriminates against religion and is contrary to the fundamental educational needs of the country, I dissent here as I have in *Lemon v. Kurtzman*, 403 U. S. 602 (1971); *Committee for Public Education v. Nyquist*, 413 U. S. 756 (1973); *Levitt v. Committee*, 413 U. S. 472 (1973); *Meek v. Pittenger*, 421 U. S. 349 (1975), and *Wolman v. Walter*, 45 USLW 4861 (1977).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 21, 1977

Re: No. 76-616, State of New York v. Cathedral Academy

Dear Potter:

Please join me.

Sincerely,

T. M.

T. M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Rochester, Minnesota

November 28, 1977

Re: No. 76-616 - New York v. Cathedral Academy

Dear Potter:

Please join me. On balance, I would much prefer to have footnote 2 omitted. I doubt if it really adds much, and it may cause confusion rather than assistance in the future. Whatever you decide to do about it, I am with you in any event.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 21, 1977

76-616 State of New York v. Cathedral Academy

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 22, 1977

Re: No. 76-616 - State of New York v. Cathedral Academy

Dear Potter:

Would you please add at the end of the circulating draft opinion in this case the following:

"Mr. Justice Rehnquist believes that this case is controlled by the principles established in Lemon v. Kurtzman, 411 U.S. 192, and would therefore affirm the judgment of the Court of Appeals of New York."

Though I do not plan to write anything myself, I reserve the right to join any other dissenting opinion or statement that may commend itself to me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

November 16, 1977

RE: 76-616 - State of New York v. Cathedral Academy

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference