

# The Burger Court Opinion Writing Database

*Philadelphia v. New Jersey*  
437 U.S. 617 (1978)

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 16, 1978

Re: 77-404 - City of Philadelphia v. New Jersey

Dear Bill:

This is a close question, but I join your dissent.

Regards,

W. P.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1978

RE: No. 77-404 City of Philadelphia v. New Jersey

Dear Potter:

I voted the other way but I am now completely  
persuaded and am happy to join.

Sincerely,



Mr. Justice Stewart

cc: The conference

JN

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 31, 1978

Re: No. 77-404, City of Philadelphia v. New Jersey

Dear Chief,

After the Conference discussion of this case last Monday, you asked me to assign the opinion. I shall undertake it myself.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 1 JUN 1071

Recirculated:

No. 77-404, CITY OF PHILADELPHIA, et al. v. NEW JERSEY, et al.

MR. JUSTICE STEWART delivered the opinion of the Court.

A New Jersey law prohibits the importation of most "solid or liquid waste which originated or was collected outside the territorial limits of the State . . ." In this case we are required to decide whether this statutory prohibition violates the Commerce Clause of the United States Constitution.

I

The statutory provision in question is Chapter 363 of 1973 New Jersey Laws, which took effect in early 1974. In pertinent part it provides:

"No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner [of the state Department of Environmental Protection] shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State." N.J. Rev. Stat. § 13:11-10.<sup>19</sup>

As authorized by c. 363, the Commissioner promulgated regulations permitting four categories of waste to enter the State.<sup>2/</sup> N.J.A.C. 7:1-7:4.2. Apart from these narrow

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 5, 1978

No. 77-404, Philadelphia v. N. J.

Dear Harry,

Thanks for your note. Your suggestion is a good one, and I shall be glad to make the change you propose.

Sincerely yours,

*PS*  
✓

Mr. Justice Blackmun

4, 5, 6, 7, 9, 10, 12

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: 7 JUN 1974

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-404

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

[June —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

A New Jersey law prohibits the importation of most "solid or liquid waste which originated or was collected outside the territorial limits of the State . . . ." In this case we are required to decide whether this statutory prohibition violates the Commerce Clause of the United States Constitution.

1

The statutory provision in question is Chapter 363 of 1973 New Jersey Laws, which took effect in early 1974. In pertinent part it provides:

"No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner [of the state Department of Environmental Protection] shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State." N. J. Rev. Stat. § 13:11-10.<sup>1</sup>

<sup>1</sup> New Jersey enacted a Waste Control Act, N. J. Rev. Stat. § 13:11-1 *et seq.*, in early 1973. This Act empowered the State Commissioner of

11, 12

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: 19 JUN 1974

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 77-404**

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

[June —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

A New Jersey law prohibits the importation of most "solid or liquid waste which originated or was collected outside the territorial limits of the State . . . ." In this case we are required to decide whether this statutory prohibition violates the Commerce Clause of the United States Constitution.

I

The statutory provision in question is Chapter 363 of 1973 New Jersey Laws, which took effect in early 1974. In pertinent part it provides:

"No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner [of the state Department of Environmental Protection] shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State." N. J. Rev. Stat. § 13:11-10.<sup>1</sup>

<sup>1</sup> New Jersey enacted a Waste Control Act, N. J. Rev. Stat. § 13:11-1 *et seq.*, in early 1973. This Act empowered the State Commissioner of

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 1, 1978

Re: 77-404 - City of Philadelphia v.  
New Jersey

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Dear Potter,

Please join me.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 2, 1978

Re: No. 77-404 - City of Philadelphia v. New Jersey

Dear Potter:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice Stewart

cc: The Conference

June 5, 1978

Re: No. 77-404 - City of Philadelphia v. New Jersey

Dear Potter:

I always shy away from the use of the superlative in connection with case writings. One such use appears on page 6 of the Xerox copy of your opinion where there is a clause "nowhere better expressed." Could you see fit to change that to "That broad purpose was well expressed by"? I think the use of the superlative here is a little odd when much of what Mr. Justice Jackson said is a quote from Stone's opinion in 294 U.S.

My joinder of your opinion is not conditioned on this request.

Sincerely,

AB

Mr. Justice Stewart

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1978

Re: No. 77-404 - City of Philadelphia v. New Jersey

Dear Potter:

Please join me.

Sincerely,

*Harry* /

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 1, 1978

No. 77-404 Philadelphia v. New Jersey

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

June 7, 1978

Re: No. 77-404 City of Philadelphia v. New Jersey

Dear Potter:

I anticipate trying a very short dissent in this case, which should be around in a few days.

Sincerely,

W.W.

Mr. Justice Stewart

Copies to 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  
JUN 14 1974  
Circulated: \_\_\_\_\_

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

No. 77-404 City of Philadelphia v. New Jersey

MR. JUSTICE REHNQUIST, dissenting.

A growing problem in our Nation is the sanitary treatment and disposal of solid waste. For many years, solid waste was incinerated. Because of the significant environmental problems attendant to incineration, however, this method of solid waste disposal has declined in use in many localities, including New Jersey. "Sanitary" landfills have replaced incineration as the principal method of disposing of solid waste. In Chapter 363 of the Laws of 1973, the State of New Jersey legislatively recognized the unfortunate

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 19, 1978

Re: No. 77-404 - City of Philadelphia v. New Jersey

Dear Potter:

Responding to the changes in your proposed Court opinion in this case, I will delete the paragraph beginning on the bottom of page 6 and ending at the top of page 8 of the Xerox circulation of my dissent dated June 14th, and substitute for that paragraph the following (the text of footnote 3, referred to in that paragraph, will of course likewise be deleted):

The Court's effort to distinguish these prior cases is unconvincing. It first asserts that the quarantine laws which have previously

been upheld "ban the importation of articles such as diseased livestock that should have been destroyed as soon as possible because their very movement risked contagion and other evils." Ante, at 11. According to the Court, the New Jersey law is distinguishable from these other laws, and invalid, because the concern of New Jersey is not with the movement of solid waste but of the present inability to safely dispose of it once it reaches its destination. But I think it far from clear that the state's law has as limited a focus as the Court imputes to it: Solid waste which is a

PP 1, 3-4

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: 1978-06-13

1st PRINTED DRAFT

Recirculated: 1978-06-13

## SUPREME COURT OF THE UNITED STATES

No. 77-404

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

[June —, 1978]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE  
joins, dissenting.

A growing problem in our Nation is the sanitary treatment and disposal of solid waste.<sup>1</sup> For many years, solid waste was incinerated. Because of the significant environmental problems attendant to incineration, however, this method of solid waste disposal has declined in use in many localities, including New Jersey. "Sanitary" landfills have replaced incineration as the principal method of disposing of solid waste. In Chapter 363 of the Laws of 1973, the State of New Jersey legislatively recognized the unfortunate fact that landfills also present extremely serious health and safety problems. First, in New Jersey, "virtually all sanitary landfills can be expected to produce leachate, a noxious and highly polluted liquid which is seldom visible and frequently pollutes . . . ground and surface waters." App. 149. The natural decomposition process which occurs in landfills also produces large quantities of methane and thereby presents a significant explosion hazard.

<sup>1</sup> Congress specifically recognized the substantial dangers to the environment and public health that are posed by current methods of disposing of solid waste in the Resource Conservation and Recovery Act of 1976, 90 Stat. 2795. As the Court recognizes, *ante*, at 16-17, n. 4, the laws under challenge here "can be enforced consistently with the program goals and the respective federal-state roles intended by Congress when it enacted" this and other legislation and are thus not pre-empted by any federal statutes.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

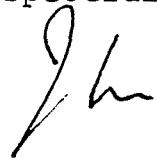
June 1, 1978

Re: 77-404 - City of Philadelphia v. New Jersey

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference