

# The Burger Court Opinion Writing Database

## *Ambach v. Norwick*

441 U.S. 68 (1979)

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

February 22, 1979

Personal

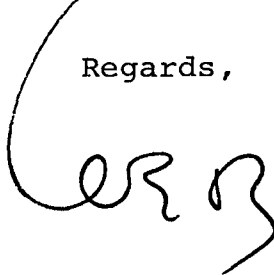
Re: 76-808 - Ambach v. Norwich

Dear Lewis:

I am in agreement with your opinion except for FN 14. The anomalous situation in New York City where aliens can vote for and sit on school boards results from rulings of the City Boards of Elections and of Education. I do not understand the State to have sanctioned this interpretation of the pertinent statute, §2590-c. If the State were to expressly prohibit service on school boards by aliens, I would have no trouble applying your reasoning in this case to sustain them.

I wonder if you would be willing to change FN 14 so that it observes the New York City situation but does not imply that we would treat statutes governing aliens' service on school boards different from the way we have those covering teachers and police. I would even be willing to go so far as to signal that we would not.

Regards,



Mr. Justice Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 22, 1979

Re: 76-808 - Ambach v. Norwick

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

Copies to the Conference

M

Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 23, 1979

Dear Harry:

Thurgood, John, you and I are in dissent in  
No. 76-808 Ambach v. Norwick. Would you be will-  
ing to undertake the dissent?

Sincerely,

Bul

Mr. Justice Blackmun

cc: Mr. Justice Marshall  
Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 8, 1979

RE: No. 76-808 Ambach v. Norwick

Dear Harry:

Please join me in your fine dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 13, 1979

Re: 76-808 - Ambach v. Norwich

Dear Lewis:

I am glad to join your opinion for the  
Court.

Sincerely yours,

P.S.  
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 17, 1979

Re: 76-808 - Ambach v. Norwick

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Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 22, 1979

Re: No. 76-808 - Ambach v. Norwick

Dear Lewis:

I await the dissent.

Sincerely,

*JM.*  
T.M.

Mr. Justice Powell

cc: The Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 7, 1979

Re: 76-808 - Ambach v. Norwick

Dear Harry:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Blackmun

cc: The Conference

AM

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 23, 1979

Dear Bill:

Yes, I shall be glad to undertake the dissent in No. 76-808, Ambach v. Norwick. I shall probably wait until I see what the majority opinion looks like.

Sincerely,

Mr. Justice Brennan

cc: Mr. Justice Marshall ✓  
Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 21, 1979

Re: No. 76-808 - Ambach v. Norwick

Dear Lewis:

In due course, I shall try my hand at a dissent in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 7 MAR 1979

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

No. 76-808 - Ambach v. Norwick

MR. JUSTICE BLACKMUN, dissenting.

Once again the Court is asked to rule upon the constitutionality of one of New York's many statutes that impose a requirement of citizenship upon a person before that person may earn his living in a specified occupation. <sup>1/</sup> These New York statutes, for the most part, have their origin in the frantic and overreactive days of the first World War when attitudes of parochialism and fear of the foreigner were the order of the day. This time we are concerned with the right to teach in the public schools of the State, at the elementary and secondary levels, and with the citizenship requirement that N. Y. Educ. Law § 3001.3 (Mc Kinney), <sup>2/</sup> quoted by the Court, at 1, n. 1, imposes.

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

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 9 MAR 1979

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-808

Gordon M. Ambach, Individually  
and as Commissioner of the  
New York State Department of Education,  
et al., Appellants,  
v.  
Susan M. W. Norwick et al.

On Appeal from the  
United States District  
Court for the Southern  
District of New York.

[March —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

Once again the Court is asked to rule upon the constitutionality of one of New York's many statutes that impose a requirement of citizenship upon a person before that person may earn his living in a specified occupation.<sup>1</sup> These New York statutes, for the most part, have their origin in the frantic and overreactive days of the first World War when attitudes of parochialism and fear of the foreigner were the order of the day. This time we are concerned with the right to teach in the public schools of the State, at the elementary and secondary levels, and with the citizenship requirement that N. Y. Educ. Law § 3001.3 (McKinney), quoted by the Court, at 1 n. 1, imposes.<sup>2</sup>

<sup>1</sup>One of the appellees in *Nyquist v. Mauclet*, 432 U. S. 1 (1977), submitted a list of the New York statutes that required citizenship, or a declaration of intent to become a citizen, for no fewer than 37 occupations. Brief for Appellee Mauclet, O. T. 1976, No. 76-208, pp. 19-22, nn. 8-44, inclusive. Some of those statutes have been legislatively repealed or modified, or judicially invalidated. Others are still in effect. Among the latter are those relating to the occupations of inspector, certified shorthand reporter, funeral director, masseur, physical therapist, and animal technician.

<sup>2</sup>This particular citizenship requirement had its origin in 1918 N. Y. Laws, ch. 158, effective Apr. 4, 1918.

✓  
LFP  
7/11/79  
10: 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: 16 FEB 1979

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-808

Gordon M. Ambach, Individually  
and as Commissioner of the  
New York State Depart-  
ment of Education,  
et al., Appellants,  
v.

Susan M. W. Norwick et al.

On Appeal from the  
United States District  
Court for the Southern  
District of New York.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a State may, consistently with the Equal Protection Clause of the Fourteenth Amendment, refuse to employ as elementary and secondary school teachers aliens who are eligible for United States citizenship but who refuse to seek naturalization.

### I

New York Education Law § 3001 (3) forbids certification as a public school teacher of any person who is not a citizen of the United States, unless that person has manifested an intention to apply for citizenship.<sup>1</sup> The Commissioner of

<sup>1</sup> The statute provides:

"No person shall be employed or authorized to teach in the public schools of this state who is:

"3. Not a citizen. The provisions of this subdivision shall not apply, however, to an alien teacher now or hereafter employed provided such teacher shall make due application to become a citizen and thereafter within the time prescribed by law shall become a citizen. The provisions of this subdivision shall not apply after July first, nineteen hundred sixty-seven, to an alien teacher employed pursuant to regulations adopted by

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: \_\_\_\_\_

Recirculated: 26 FEB 1979

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-808

Gordon M. Ambach, Individually  
 and as Commissioner of the  
 New York State Department  
 of Education,  
 et al., Appellants,  
 v.  
 Susan M. W. Norwick et al.

On Appeal from the  
 United States District  
 Court for the Southern  
 District of New York.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a State, consistently with the Equal Protection Clause of the Fourteenth Amendment, may refuse to employ as elementary and secondary school teachers aliens who are eligible for United States citizenship but who refuse to seek naturalization.

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February 28, 1979

76-808 Ambach v. Norwick

Dear Chief:

Thank you for your letter commenting on fn 14 in my opinion.

As Harry is writing a dissent, and probably will address the school board argument (relied upon by appellees), I will await his circulation before making any change in my note.

I see your point, and believe I can accommodate you.

Sincerely,

The Chief Justice

lfp/ss



7-9,12,13

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: \_\_\_\_\_

Recirculated: **28 MAR 1979**

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-808

Gordon M. Ambach, Individually  
 and as Commissioner of the  
 New York State Department of Education,  
 et al., Appellants.

v.

Susan M. W. Norwick et al.

On Appeal from the  
 United States District  
 Court for the Southern  
 District of New York.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a State, consistently with the Equal Protection Clause of the Fourteenth Amendment, may refuse to employ as elementary and secondary school teachers aliens who are eligible for United States citizenship but who refuse to seek naturalization.

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"3. Not a citizen. The provisions of this subdivision shall not apply, however, to an alien teacher now or hereafter employed provided such teacher shall make due application to become a citizen and thereafter within the time prescribed by law shall become a citizen. The provisions of this subdivision shall not apply after July first, nineteen hundred sixty-seven, to an alien teacher employed pursuant to regulations adopted by

13

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

4th DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Recirculated: **15 MAR 1979**

No. 76-808

Gordon M. Ambach, Individually  
 and as Commissioner of the  
 New York State Depart-  
 ment of Education,  
 et al., Appellants,

On Appeal from the  
 United States District  
 Court for the Southern  
 District of New York.

v.

Susan M. W. Norwick et al.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a State, consistently with the Equal Protection Clause of the Fourteenth Amendment, may refuse to employ as elementary and secondary school teachers aliens who are eligible for United States citizenship but who refuse to seek naturalization.

**I**

New York Education Law § 3001 (3) forbids certification as a public school teacher of any person who is not a citizen of the United States, unless that person has manifested an intention to apply for citizenship.<sup>1</sup> The Commissioner of

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

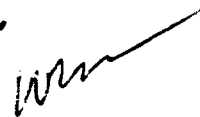
February 20, 1979

Re: No. 76-808 Ambach v. Norwick

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 23, 1979

Re: 76-808 - Ambach v. Norwick

Dear Lewis:

In shall await Harry's dissent.

Respectfully,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 7, 1979

Re: 76-808 - Ambach v. Norwick

Dear Harry:

Please join me.

Respectfully,

A handwritten signature in dark ink, appearing to be 'JP Stevens', written in a cursive style.

Mr. Justice Blackmun

Copies to the Conference

1/

One of the appellees in Nyquist v. Mauclet, 432 U.S. 1

(1977), submitted a list of the New York statutes that required citizenship, or a declaration of intent to become a citizen, for no fewer than 37 occupations. Brief for Appellee Mauclet, O.T. 1976, No. 76-208, pp. 19-22, nn. 8-44, inclusive. Some of those statutes have been legislatively repealed or modified, or judicially invalidated. Others are still in effect. Among the latter are those relating to the occupations of inspector, certified shorthand reporter, funeral director, masseur, physical therapist, and animal technician.