The Burger Court Opinion Writing Database

Estes v. Metropolitan Branches of Dallas NAACP

444 U.S. 437 (1980)

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 22, 1979

Re: (78-253 - Estes et al. v. Metro. Branches
(Dallas NAACP
(
(78-282 - Curry et al. v. Metro. Branches
(Dallas NAACP
(
(78-283 - Brinegar v. Metro. Branches Dallas NAACP

Dear Lewis:

I could join your draft to reverse summarily but you need more than my vote.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

NOLAN ESTES ET AL *v.* METROPOLITAN BRANCHES OF DALLAS NAACP ET AL.; DONALD E. CURRY ET AL. *v.* METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.; and RALPH F. BRINEGAR ET AL. *v.* METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 78-253, 78-282, and 78-283. Decided January —, 1978

MR. JUSTICE POWELL, dissenting.

The petitioners are the Board of Trustees of the Dallas Independent School District (the Board), the school superintendent, and several intervening parents groups. Respondents include the original plaintiffs (children suing by their parents as next friends) and various branches of the NAACP, which appeared as intervenors. The School District, which does not coincide entirely with the city of Dallas, has been in desegregation litigation since 1955. The present action was filed in 1970, and is not a continuation of the original suit. The District Court's first decree in the present action was appealed to the Fifth Circuit Court of Appeals, which remanded for the formulation of a new desegregation plan. *Tasby* v. *Estes,* 517 F. 2d 92, cert. denied, 423 U. S. 939 (1975).

I

On this remand, the District Court considered in detail six plans submitted by the various parties and a court-appointed expert. The District Court heard testimony from nearly 50 witnesses, including numerous experts, and produced a trial transcript of some 4,000 pages. With careful attention to the characteristics and history of the Dallas Independent School District, the District Court adopted a new plan of desegrega-

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: 2 FEB 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

NOLAN ESTES ET AL *v.* METROPOLITAN BRANCHES OF DALLAS NAACP ET AL.; DONALD E. CURRY ET AL. *v.* METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.; and RALPH F. BRINEGAR ET AL. *v.* METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 2, 1979

Re: No. 78-253 - Estes v. Metropolitan Branches of Dallas NAACP, et al.

Dear Lewis:

I think your proposed dissent from the dismissal of the writ in this case is excellent, and if circulated in its present form I will be more than happy to join it.

Sincerely,

WHR

Mr. Justice Powell

Copy to Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 17, 1979

Re: Nos. 78-253, 78-282, and 78-283 - Estes v. Metropolitan Branches of Dallas NAACP, et al.

Dear Lewis:

I have every intention of joining your opinion dissenting from the denial of certiorari in this case, but have been working on some relatively minor changes which I would appreciate your at least considering. I had thought I would be able to send the changes to you by now, but as usual I have accomplished less during the two weeks of oral argument than I thought. If I have not been able to get them to you by early Thursday, I will ask that the case go over to the next Conference.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 24, 1979

Re: Nos. 78-253, 78-282, and 78-283 - Estes v. NAACP

Dear Lewis:

As I told you earlier, I intend to join your draft dissent in this case. I don't think that, as a matter of original preference, I would say that I would either summarily reverse or grant the petition; my choice would be to simply grant the petition, because in the light of Swann, it is difficult to say that the Court of Appeals was so plainly wrong that its decision should be reversed without argument. However, I see that the Chief has indicated his agreement that he would summarily reverse, and since he seems to have been somewhat affected by John Stevens' expostulations against written dissents from the denials of certiorari, you might lose him if you took my tack. I will join it either way.

leave as we have it, I would 9 prefer to Grant.

There are several relatively minor changes about which I feel more strongly than whether or not the bottom line should be "grant" or "summarily reversed". These are as follows:

Page 5: I think the first full sentence on the page beginning "The scope of the equitable powers of a District Court", followed by the citation to Swann, cuts against the major thrust of your dissent, and I would like to see it deleted. As between the District Court and the Court of Appeals, Swann undoubtedly stands for the proposition that much deference will be given to the plan accepted by the District Court; but Mobile tends to cut the other way, if I remember

correctly, since there the District Court as well as the Court of Appeals had refused to implement the plan which this Court ultimately ordered it to implement. When the sentence in question speaks only of the breadth and flexibility of the powers of a District Court, without undertaking to circumscribe that power by showing the adjectives are merely meant to compare it with the power of a Court of Appeals, I think we may be re-enforcing, rather than limiting, that part of Swann which neither of us like: the notion that the District Court, once it finds there to have been a "violation", can treat the matter of remedy much as it would a railroad reorganization or an equitable receivership. I think that distinction would be made even clearer if you added a quote from your Austin dissent after the text at note 6 on the same page something like this:

> "At the same time, District Courts must remain sensitive to the 'limitation repeatedly expressed by this Court that the extent of an equitable remedy is determined by and may not properly exceed the effect of the constitutional violation.' Austin Independent School District v. United States, 429 U.S. 990, 995 (1976)(Powell, J., concurring)."

Page 8, footnote 8: In line 5 of this footnote, I would prefer to see the phrase "minutiae of this kind to be included in the" and substitute the word "such" for that phrase. Since we have stressed in the Dayton case the necessity for detailed examination

of the incremental effects of past segregation in order to devise a remedy, I think it would be better not to say anything which would downplay the care that a District Court ought to take in this whole area, even though I agree entirely with you that the kind of minutiae that the Court of Appeals required here is not warranted.

Page 10: For the same reasons that I would like to see the language on page 5 changed, I would like to see the language "exercised its broad equitable discretion to order" in the second full sentence on this page changed to "ordered". I realize that emphasizing the broad discretion of the District Court, and the presumably much narrower authority in the Court of Appeals to review that discretion, cuts in favor of reversing the Court of Appeals in this case; but over the long pull, I would not want to settle for unbridled discretion in the District Courts any more than in the Courts of Appeals; both ought to be limited by the nature of the violation found, and the traditional regard for the autonomy of local governing bodies.

I have two additional suggestions which are completely matters of taste, and I leave entirely in your hands. At page 11 I think it might offend fewer sensitivities if the Dallas School District were compared not only with the District of Columbia, but with an obviously all white city, such as Fargo, North Dakota or Sioux Falls, South Dakota, and with a largely Hispanic city such as El Paso, Texas, or Calexico, California. For much the same reason,I think the word "white" in line 5 on page 12 should be changed to "Anglo", since the "Hispanics" or whatever they currently prefer to be called consider themselves "white".

Brownsville

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 5, 1979

Re: Nos. 78-253, et al. - Estes v. Metropolitan Branches of Dallas NAACP, et al.

Dear Lewis:

Please join me in your opinion dissenting from the denial of certiorari in this case.

Sincerely,

Mr. Justice Powell

Copies to the Conference