

The Burger Court Opinion Writing Database

Pennhurst State School and Hospital v. Halderman

451 U.S. 1 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

March 18, 1981

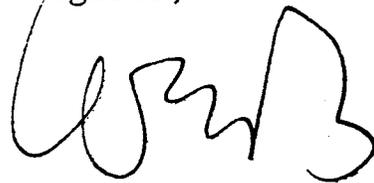
RE: 79-1404, etc. - Pennhurst State School and Hospital
et al. v. Halderman, et al.

MEMORANDUM TO THE CONFERENCE:

I find I agree with much of what both Byron and Bill have given us in memos on this case.

However, to try to make headway I opt for Bill's approach generally and may have some suggestions on that score.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

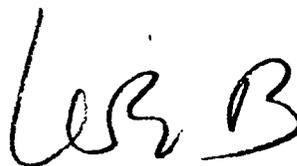
April 1, 1981

Re: 79-1404, - Pennhurst State School Cases
etc.

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to read "WRB". The letters are stylized and connected.

Justice Rehnquist

Copies to the Conference

M

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 15, 1980

RE: Nos. 79-1404, 1408, 1414, 1415 & 1489
Pennhurst v. Halderman

Dear Byron, Thurgood and Harry:

We four are in dissent in the above. Would
you Byron try your hand at it?

Sincerely,

Bill

Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

This was in the wrong folder

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 11, 1981

RE: Nos. 79-1404, 1408, 1414, 1415 & 1489 Pennhurst
State School and Hospital, et al. v. Halderman

Dear Byron:

I am in general agreement with your memorandum
in the above.

Sincerely,

W. J. Brennan, Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 1, 1981

RE: Nos. 79-1404, etc. Pennhurst State School Cases

Dear Byron:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,

Bill

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 13, 1981

Re: 79-1404 - Pennhurst State School v.
Halderman

Dear Bill:

I am in basic agreement with your memorandum.

Sincerely yours,

P.S.
/

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 15, 1980

Re: Nos. 79-1404, 1408, 1414, 1415
and 1489: Pennhurst v. Halderman

Dear Bill,

Although I'm not sure you and I
have the same views about this case, I
shall be glad to write in dissent.

Sincerely yours,



Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 11, 1981

Re: 79-1404 - Pennhurst State School
and Hospital v. Halderman

Dear Bill,

I shall write partially disagreeing with your memorandum in this case. Although I agree that §6010 is not an attempt to enforce the Fourteenth Amendment, it is part of a grant-in-aid statute, and the rights it declares or suggests must be taken into account if a state chooses to participate and presents a plan to the Secretary for approval. The administrative view of the state's obligations will then be known by the state, and if it does not like it, it may terminate its interest.

Furthermore, the rights referred to §6010 are enforceable in a §1983 action to the extent that a participating state must either implement them or cease receiving federal funds. There is nothing new in §1983 being used to ventilate a claim that a state plan is inconsistent with or inadequate under federal law, even though the Secretary and perhaps his lawyer, the Solicitor General, are on the side of the state. Here, of course, the Secretary's lawyer, who also happens to represent the United States, partially disagrees with him.

My offering, which will be a dissent in the event you command a court, will be along in due course.

Sincerely yours,

Byron
cu

Mr. Justice Rehnquist
Copies to the Conference

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

From: Mr. Justice White

Circulated: 5 MAR 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
79-1404 v.

Terri Lee Halderman et al.

Mayor of City of Philadel-
phia et al., Petitioners,
79-1408 v.

Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,
79-1414 v.

Pennhurst State School and
Hospital et al.

Commissioners and Mental
Health/Mental Retardation
Administrators for Bucks
County et al., Petitioners,
79-1415 v.

Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[March —, 1981]

Memorandum of JUSTICE WHITE.

Pennhurst is a residential institution for the retarded op-
erated by the Commonwealth of Pennsylvania and serving a

- Stylistic changes throughout;
and pp. 9-11, 17

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

From: Mr. Justice White

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
79-1404 v.
Terri Lee Halderman et al.

Mayor of City of Philadel-
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79-1408 v.
Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,
79-1414 v.
Pennhurst State School and
Hospital et al.

Commissioners and Mental
Health/Mental Retardation
Administrators for Bucks
County et al., Petitioners,
79-1415 v.
Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.
Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit,

[March —, 1981]

Memorandum of JUSTICE WHITE.

Pennhurst is a residential institution for the retarded op-
erated by the Commonwealth of Pennsylvania and serving a

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pp. 1, 23 & stylistic

Handwritten scribbles and initials

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

From: Mr. Justice White

Circulated: _____

Recirculated: 21 MAR 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
79-1404 v.

Terri Lee Halderman et al.

Mayor of City of Philadel-
phia et al., Petitioners,
79-1408 v.

Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,

79-1414 v.

Pennhurst State School and
Hospital et al.

Commissioners and Mental
Health/Mental Retardation
Administrators for Bucks
County et al., Petitioners,
79-1415 v.

Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[March —, 1981]

JUSTICE WHITE, dissenting in part.

Pennhurst is a residential institution for the retarded op-
erated by the Commonwealth of Pennsylvania and serving a

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: \

4th DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Propagated: _____

Recirculated: 2 APR 1981

Pennhurst State School and
Hospital, et al., Petitioners,
79-1404 v.

Terri Lee Halderman et al.

Mayor of City of Philadel-
phia et al., Petitioners,
79-1408 v.

Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,
79-1414 v.

Pennhurst State School and
Hospital et al.

Commissioners and Mental
Health/Mental Retardation
Administrators for Bucks
County et al., Petitioners,
79-1415 v.

Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[March —, 1981]

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dis-
senting in part.

Pennhurst is a residential institution for the retarded op-
erated by the Commonwealth of Pennsylvania and serving a

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1981

Re: Nos. 79-1404, 1408, 1414, 1415 & 1489 -
Pennhurst v. Halderman

Memorandum to the Conference

None of the memoranda as yet circulated in this case is entirely satisfactory to me. Rather than draft a lengthy one of my own, I sketch below the points I would address.

1. No one involved in this litigation disputes that the conditions at Pennhurst are abysmal.

2. Nor does anyone dispute that Congress had in mind Pennhurst and other institutions like it when it enacted the "bill of rights," §6010.

3. The position taken by Bill Rehnquist is the most untenable: that Congress's deliberate effort to do something was merely hortatory.

4. More tenable is Byron's view that Congress meant to condition funds on protection of those rights. But he neglects to give guidance on the hardest part of the case: the remedy.

5. The remedy, of course, must follow from an understanding of the statute as a funding condition statute. The structure of state-submitted plans, subject to federal approval and federal fund-cut-off, is a familiar device of this federalist system. It does have limits. The proper remedy for a violation of the obligations assumed by the state under this device must take into account the scope of substantive obligations, any limits imposed by the 11th amendment, and the limited enforcement powers of courts.

6. In recognition of those limits, the ideal remedy is what the Court did in Rosado v. Wyman, 397 U.S. 397 (1970); to remand, and have the defendant propose either a plan to achieve compliance or else withdraw from the funding program. Byron refers to this solution but neglects the fact that at least part of it already was attempted here-- the District Court asked the defendant for a proposed compliance plan--and nothing ensued. So the next possibility is for a remand with an express opt-out option -- though this is problematic given that the state has wrongly been using the funds for several years now.

7. An additional, alternative reason for remand would be to direct the lower courts to articulate an enforceable compliance plan. Of course, this puts us back at the nub of the problem: how to give definition to the amorphous rights at issue here. I think it is quite possible here to make the remedy track the statute, which required the participating state to create a state plan for developing individualized treatment programs, themselves consistent with the statute's bill of rights. It is undisputed that these individual programs were never developed as required, and that the state-level plan failed to force their development.

Well, there it is!

Sincerely,

T.M.
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 6, 1981

Re: Nos. 79-1404, 1408, 1414, 1415, and 1489 -
Pennhurst State School Cases

Dear Byron:

Please join me.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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: APR 13 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

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Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
79-1404 v.

Terri Lee Halderman et al.

Mayor of City of Philadel-
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Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,
79-1414 v.

Pennhurst State School and
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Health/Mental Retardation
Administrators for Bucks
Count et al., Petitioners,
79-1415 v.

Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[April —, 1981]

JUSTICE BLACKMUN, concurring in part and concurring in
the judgment.

Although I agree that the judgment of the Court of Ap-
peals must be reversed, and although I am in accord with

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1981

79-1404 Pennhurst

Dear Bill:

I think your memorandum is a sound disposition of this case, and will join an opinion along the lines you have written.

Although I voted to reverse and remand for essentially the reasons you advance, I did view §6010(3) as perhaps imposing some obligation on both federal and state governments. On reflection, however, I think you are probably right in reading §6010 in its entirety as a statement of federal policy. In any event, as the Act is a "cut and paste" piece of legislation - with congressional intent almost incomprehensible - it is desirable for Congress to reconsider it.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Pp 9, 12 & 16

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: FEB 10 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1404

Pennhurst State School and Hospital, et al., Petitioners,
v.
Terri Lee Halderman et al. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1981]

Memorandum of JUSTICE REHNQUIST.

At issue in this case is the scope and meaning of the Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U. S. C. § 6000 *et seq.* The Court of Appeals for the Third Circuit held that the Act created substantive rights in favor of the mentally retarded, that those rights were judicially enforceable, and that conditions at the Pennhurst State School and Hospital (Pennhurst), a facility for the care and treatment of the mentally retarded, violated those rights. For the reasons stated below, I would reverse the decision of the Court of Appeals and remand the case for further proceedings.

I

The Commonwealth of Pennsylvania owns and operates Pennhurst. Pennhurst is a large institution, housing approximately 1,200 residents. Seventy-five percent of the residents are either "severely" or "profoundly" retarded—that is, with an IQ of less than 35—and a number of the residents are also physically handicapped. About half of its residents were committed there by court order and half by a parent or other guardian.

In 1974, respondent Terri Lee Halderman, a minor retarded resident of Pennhurst, filed suit in the District Court for the Eastern District of Pennsylvania on behalf of herself

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STYLISTIC CHANGES THROUGHOUT

pp 310, 15-17, 19-21

Fn 20, 22, 23

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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
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Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit,

[February —, 1981]

Memorandum of JUSTICE REHNQUIST.

At issue in this case is the scope and meaning of the De-
velopmentally Disabled Assistance and Bill of Rights Act of

STYLISTIC CHANGES THROUGHOUT

Pp 1, 12, 15, 21

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

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

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Hospital, et al., Petitioners,
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79-1408 v.

Terri Lee Halderman et al.

Pennsylvania Association for
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Petitioners,
79-1414 v.

Pennhurst State School and
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County et al., Petitioners,
79-1415 v.
Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
79-1489 v.

Terri Lee Halderman et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[February —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.
At issue in this case is the scope and meaning of the De-
velopmentally Disabled Assistance and Bill of Rights Act of

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p. 27

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

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-1404, 79-1408, 79-1414, 79-1415, AND 79-1489

Pennhurst State School and
Hospital, et al., Petitioners,
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Mayor of City of Philadel-
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Terri Lee Halderman et al.

Pennsylvania Association for
Retarded Citizens et al.,
Petitioners,
79-1414 v.

Pennhurst State School and
Hospital et al.

Commissioners and Mental
Health/Mental Retardation
Administrators for Bucks
County et al., Petitioners,
79-1415 v.

Terri Lee Halderman et al.

Pennhurst Parents-Staff As-
sociation, Petitioner,
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On Writs of Certiorari to the
United States Court of Ap-
peals for the Third Circuit.

[February —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

At issue in this case is the scope and meaning of the De-
velopmentally Disabled Assistance and Bill of Rights Act of

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1981

Re: 79-1404 - Pennhurst State School and
Hospital v. Halderman

Dear Bill:

Although I have some reservations about not deciding the state law question, I am persuaded that the disposition you propose is correct. I will join an opinion based on your memorandum.

Respectfully,



Justice Rehnquist

Copies to the Conference