

# The Burger Court Opinion Writing Database

## *Rendell-Baker v. Kohn*

457 U.S. 830 (1982)

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



To: Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **The Chief Justice**

Circulated:     MAY 15 1982    

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2102

SHEILA RENDELL-BAKER, ET AL., PETITIONERS *v.*  
 SANDRA KOHN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FIRST CIRCUIT

[May —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the  
 Court.

We granted certiorari to decide whether a private school, whose income is derived primarily from public sources and which is regulated by public authorities, acted under color of state law when it discharged certain employees.

I

A

Respondent Kohn is the Director of the New Perspectives School, a nonprofit institution located on privately owned property in Brookline, Massachusetts. The school was founded as a private institution and is operated by a Board of Directors, none of whom are public officials or are chosen by public officials. The school specializes in dealing with students who have experienced difficulty completing public high schools; many have drug, alcohol, or behavioral problems, or other special needs. In recent years, nearly all of the students at the school have been referred to it by the Brookline or Boston school committees, or by the Drug Rehabilitation Division of the Massachusetts Department of Mental Health. The school issues high school diplomas certified by the Brookline School Committee.

When students are referred to the school by Brookline or

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

CHAMBERS OF  
THE CHIEF JUSTICE

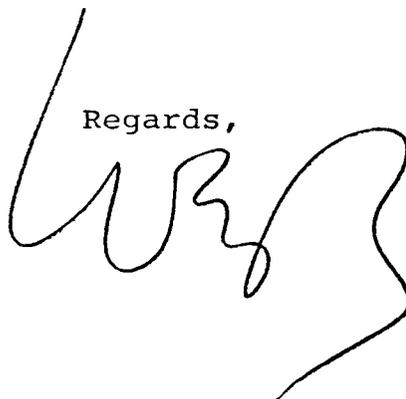
May 28, 1982

RE: 80-2102 - Rendell-Baker v. Kohn

Dear Harry:

I have no problem with your suggested deletion. It will  
be done today.

Regards,



Justice Blackmun

Copies to the Conference .85 7/28/82

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: **JUN 1 1982**

*P. 11*

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2102

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To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: 6/22

p. 8

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2102

SHEILA RENDELL-BAKER, ET AL., PETITIONERS *v.*  
SANDRA KOHN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 4, 1982

RE: No. 80-2102 Rendell-Baker v. Kohn

Dear Thurgood:

You and I are the only dissenters in the above.

Will you undertake the dissent?

Sincerely,

Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 17, 1982

RE: No. 80-2102 Rendell-Baker v. Kohn

Dear Thurgood:

Please join me in your dissent in the above.

Sincerely,



Justice Marshall

cc: The Conference

85

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

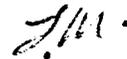
June 1, 1982

Re: 80-2102 - Sheila Rendell-Baker v. Sandra Kohn

Dear Chief:

In due course I will circulate a dissent.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Marshall**

Circulated: JUN 15 1982

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2102

SHEILA RENDELL-BAKER, ET AL., PETITIONERS *v.*  
 SANDRA KOHN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FIRST CIRCUIT

[June —, 1982]

JUSTICE MARSHALL, dissenting.

Petitioners in these consolidated cases, former teachers and counselors at the New Perspectives School in Brookline, Massachusetts, were discharged by the school's administrators when they criticized certain school policies. They commenced actions under 42 U. S.C. § 1983, claiming that they had been discharged in violation of the First, Fifth, and Fourteenth Amendments. The Court today holds that their suits must be dismissed because the school did not act "under color" of state law. According to the majority, the decision of the school to discharge petitioners cannot fairly be regarded as a decision of the Commonwealth of Massachusetts.

In my view, this holding simply cannot be justified. The state has delegated to the New Perspectives School its statutory duty to educate children with special needs. The school receives almost all of its funds from the state, and is heavily regulated. This nexus between the school and the state is so substantial that the school's action must be considered State action. I therefore dissent.

I

The critical facts of this case deserve restatement. Chapter 766 of the Massachusetts Acts of 1972, Mass. Gen. Laws ch. 71B, §§ 1-14 provides that all students with special needs

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 28, 1982

Re: No. 80-2102 - Rendell-Baker v. Kohn

Dear Chief:

Your conference notes presumably will indicate that I was somewhat concerned about what this case would be if the plaintiffs were students, not teachers, and that I wished not to foreclose that issue.

As a consequence, the second full sentence on page 11 of your opinion bothers me somewhat. My concern will be alleviated if you eliminate the words "the relationship between the school and the students is not affected by the funding source; and." It seems to me that the opinion does not suffer at all if that phrase is removed. If you see your way clear to do this, you have my joinder.

Sincerely,

*H. A. B.*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 1, 1982

Re: No. 80-2102 - Rendell-Baker v. Kohn

Dear Chief:

Please join me in your recirculation of June 1.

Sincerely,

*H.A.B.*

The Chief Justice

cc: The Conference

May 26, 1982

80-2102 Shelia Rendell-Baker v. Kohn

Dear Chief:

I think your opinion is quite good, and have written a join note.

You may recall that I am writing a dissent in Lugar. This is the case in which Byron now has a Court for his view that a creditor becomes a "state actor," and may be sued under §1983, when he institutes a suit to collect a debt and at the same time obtains an attachment. The creditor, with advice of counsel, had proceeded in accordance with Virginia law that had been on the books unquestioned for over a century.

As I have not revised my dissent since Byron obtained a Court, I am not sure whether any of your language in Rendell-Baker v. Kohn will prove troublesome. At most, I think only minor changes may be desirable. I write now simply to let you know that this is a possibility.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1982

80-2102 Shelia Rendell-Baker v. Kohn

Dear Chief:

Please join me in your opinion.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

.85 MAY 26 1982

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 26, 1982

Re: No. 80-2102 Rendell-Baker v. Kohn

Dear Chief:

Please join me in your opinion for the Court.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 3, 1982

Re: 80-2102 - Rendell-Baker v. Kohn

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 26, 1982

No. 80-2102 Rendell-Baker v. Kohn

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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88 MAY 26 1982