The Burger Court Opinion Writing Database

Crawford v. Board of Education of Los Angeles

458 U.S. 527 (1982)

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 8, 1982

Re: No. 81-38 - Crawford v. Bd. of Education of the City of Los Angeles

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1982

RE: No. 81-38 Crawford v. Board of Education of City of Los Angeles

Dear Lewis:

I agree.

Sincerely,

Bill

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1982

RE: No. 81-38 Crawford v. Board of Education of Los Angeles

Dear Harry:

Please join me.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1982

Re: 81-38 - Crawford v. Board of Education of the City of Los Angeles

Dear Lewis,

Although I am in essential agreement with your proposed opinion, I may have a suggestion or two. Also, I should like to see what the Seattle opinion has to say.

Sincerely yours,

Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1982

81-38 - Crawford v. Board of Education of the City of Los Angeles

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

Copies to the Conference

cpm

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

From: Justice Marshall

Circulated: JUN 18 1982

Recirculated: _____

1st Draft

Crawford v. Bd. of Education., No. 81-38

JUSTICE MARSHALL, dissenting.

The Court today addresses two state constitutional amendments, each of which is admittedly designed to substantially curtail, if not eliminate, the use of mandatory student assignment or transportation as a remedy for de facto segregation. In Washington v. Seattle School District No. 1, ante at ___, the Court concludes that Washington's Initiative 350, which effectively prevents school boards from ordering mandatory school assignment in the absence of a finding of de jure segregation within the meaning of the Fourteenth Amendment, is unconstitutional because "it uses the racial nature of an issue to define the governmental decisionmaking structure, and thus imposes substantial and unique burdens on racial

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

From: **Justice Marshall**

Circulated: JUN 21 1982

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June ——, 1982]

JUSTICE MARSHALL, dissenting.

The Court today addresses two state constitutional amendments, each of which is admittedly designed to substantially curtail, if not eliminate, the use of mandatory student assignment or transportation as a remedy for *de facto* segregation. In *Washington* v. *Seattle School District No. 1*, *ante* at ——, the Court concludes that Washington's Initiative 350, which effectively prevents school boards from ordering mandatory school assignment in the absence of a finding of *de jure* segregation within the meaning of the Fourteenth Amendment, is unconstitutional because "it uses the racial nature of an issue to define the governmental decisionmaking structure, and thus imposes substantial and unique burdens on racial minorities." *Ante*, at ——. Inexplicably, the Court simultaneously concludes that Calfornia's Proposition I, which effectively prevents a state court from ordering the same mandatory remedies in the absence of a finding of *de jure* segregation, *is* constitutional because "having gone beyond the requirements of the Federal Constitution, the State was free to return in part to the standard prevailing generally throughout the United States." *Ante*, at ——. Because I fail to see how a fundamental redefinition of the governmental decisionmaking structure with respect to the same ra-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1982

Re: No. 81-38 - Crawford v. Board of Education

Dear Lewis:

I would like very much to be able to join your opinion in this case. As my conference vote indicated, I feel that this case and the Seattle case are different and that affirmances in both are in order and reconcilable.

I am, however, somewhat bothered about two expressions in the Crawford opinion. On page 8, it is said that "Proposition I does not embody a racial classification." On page 13, it is said that Proposition I does not allocate power on the basis of a discriminatory principle. While these statements may be true as far as they go, I am inclined to think that they may be read as in conflict with Seattle. If the former suggests that only classifications explicitly according different racial groups different treatment are suspect, it is inconsistent with both Seattle and with Hunter v. Erickson. And the page 13 language should not apply to distortions of the political process.

If you could put in some qualifying language with a citation to Seattle or, if you prefer, to Hunter v. Erickson, I would feel more content. As I have said above, I much prefer to be able to join your opinion in Crawford rather than merely to concur in the result.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1982

Re: No. 81-38 - Crawford v. Board of Education of the City of Los Angeles

Dear Lewis:

Although I have written separately, I join your opinion in this case.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

From: Justice Blackmun

Circulated: JUN 22 1982

Recirculated: _____

No. 81-38 - Crawford v. Bd. of Ed. of the City of Los Angeles

JUSTICE BLACKMUN, concurring.

While I join the opinion of the Court, I write separately to address what I believe are the critical distinctions between this case and Washington v. Seattle School District No. 1, ante.

The Court always has recognized that distortions of the political process have special implications for attempts to achieve equal protection of the laws. Thus the Court has found particularly pernicious those classifications that threaten the ability of minorities to involve themselves in the process of self-government, for if laws are not drawn within a "just framework," Hunter v. Erickson, 393 U. S. 385, 393 (1969) (Harlan, J., concurring), it is unlikely that they will be drawn on just principles.

The Court's conclusion in Seattle followed inexorably from these considerations. In that case the statewide electorate reallocated decisionmaking authority to "mak[e] it more difficult for certain racial and religious minorities [than for other members of the community] to achieve legislation that is in their interest.'" Washington v. Seattle School District No. 1, ante, at ___ (emphasis in original), quoting Hunter v. Erickson, 393 U. S., at 395 (Harlan, J., concurring) (slip op. 12). The Court found such a political structure impermissible, recognizing that

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June ——, 1982]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins, concurring.

While I join the opinion of the Court, I write separately to address what I believe are the critical distinctions between this case and *Washington* v. *Seattle School District No. 1*, *ante*.

The Court always has recognized that distortions of the political process have special implications for attempts to achieve equal protection of the laws. Thus the Court has found particularly pernicious those classifications that threaten the ability of minorities to involve themselves in the process of self-government, for if laws are not drawn within a "just framework," *Hunter* v. *Erickson*, 393 U. S. 385, 393 (1969) (Harlan, J., concurring), it is unlikely that they will be drawn on just principles.

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

From: **Justice Powell**

Circulated: MAY 18 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES ET AL

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[May ——, 1982]

JUSTICE POWELL delivered the opinion of the Court.

An amendment to the California Constitution provides that state courts shall not order mandatory pupil assignment or transportation unless a federal court would do so to remedy a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The question for our decision is whether this provision is itself in violation of the Fourteenth Amendment.

I

This litigation began almost twenty years ago in 1963, when minority students attending school in the Los Angeles Unified School District (District) filed a class action in state court seeking desegregation of the District's schools.[1] The case went to trial some five years later, and in 1970 the trial court issued an opinion finding that the District was substantially segregated in violation of the State and Federal Con-

[1] In 1980 the District included 562 schools with 650,000 students in an area of 711 square miles. In 1968 when the case went to trial, the District was 53.6% white, 22.6% black, 20% Hispanic, and 3.8% Asian and other. By October 1980 the demographic composition had altered radically: 23.7% white, 23.3% black, 45.3% Hispanic, and 7.7% Asian and other. See *Crawford* v. *Board of Education*, 113 Cal. App. 3d 633, 642 (1980).

P. 7, 9

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

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 3 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June ——, 1982]

JUSTICE POWELL delivered the opinion of the Court.

An amendment to the California Constitution provides that state courts shall not order mandatory pupil assignment or transportation unless a federal court would do so to remedy a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The question for our decision is whether this provision is itself in violation of the Fourteenth Amendment.

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4, 8-9, 13

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

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 21 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June ——, 1982]

JUSTICE POWELL delivered the opinion of the Court.

An amendment to the California Constitution provides that state courts shall not order mandatory pupil assignment or transportation unless a federal court would do so to remedy a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The question for our decision is whether this provision is itself in violation of the Fourteenth Amendment.

I

This litigation began almost twenty years ago in 1963, when minority students attending school in the Los Angeles Unified School District (District) filed a class action in state court seeking desegregation of the District's schools.[1] The case went to trial some five years later, and in 1970 the trial court issued an opinion finding that the District was substantially segregated in violation of the State and Federal Con-

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Stylistic Only As Marked

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

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 25 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-38

MARY ELLEN CRAWFORD, A MINOR, ETC., ET AL., PETITIONERS *v.* BOARD OF EDUCATION OF THE CITY OF LOS ANGELES ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June ——, 1982]

JUSTICE POWELL delivered the opinion of the Court.

An amendment to the California Constitution provides that state courts shall not order mandatory pupil assignment or transportation unless a federal court would do so to remedy a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The question for our decision is whether this provision is itself in violation of the Fourteenth Amendment.

I

This litigation began almost twenty years ago in 1963, when minority students attending school in the Los Angeles Unified School District (District) filed a class action in state court seeking desegregation of the District's schools.[1] The case went to trial some five years later, and in 1970 the trial court issued an opinion finding that the District was substantially segregated in violation of the State and Federal Con-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 19, 1982

Re: No. 81-38 Crawford v. Board of Education

Dear Lewis:

Please join me in your opinion for the Court.

Sincerely,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1982

No. 81-38, Crawford v. Board of Education

Dear Lewis:

Although I agree with most of what you have written in this case, I would like to wait for Harry's opinion in the Seattle case before responding finally.

Respectfully,

JPS

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1982

Re: 81-38 - Crawford v. Board of Education of the City of Los Angeles

Dear Lewis:

Having read, and indeed joined, Harry's opinion in the Seattle case, I am now prepared to join your opinion in this case. I do, however, have two suggestions that I would like to propose for your consideration.

First, there is some tension between what I propose to write in my dissent in Rogers v. Lodge and the following sentence on page 9 of your draft: "In addition, prior decisions of this Court make clear that even when a neutral law has a disproportionately adverse effect on a racial minority, the Fourteenth Amendment is violated only if a discriminatory purpose can be shown."

In some situations--for example, the one-person one-vote cases--I think an invidious intent is really irrelevant to the equal protection analysis. I wonder, therefore, if you might make some language changes in the sentence to make it read something like this: "In addition, this Court has previously held that even when a neutral law ...."

My second suggestion is that, perhaps in a footnote, either on page 7 where you now have footnote 12, or on page 9 where you now have footnote 14, that you consider inserting a sentence pointing out that in this respect

this case is different from the Seattle case. Some people are going to think that those of us who have joined both majorities have been acting somewhat inconsistently, and a comment to that effect might be helpful to us.

As I have said, I will join you whether you adopt these suggestions or not but I would be grateful if you would consider them.

Respectfully,

Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 3, 1982

Re: 81-38 - Crawford v. Board of Education of the City of Los Angeles

Dear Lewis:

Please join me.

Respectfully,

JPS

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 20, 1982

No. 81-38 Crawford v. Board of Education

Dear Lewis,

I will want to look at the first draft of the Seattle school case as well as your opinion before deciding whether to write separately to express a somewhat different approach in these two cases. With the present time crunch, it is likely I will be unable to prepare anything before June. I will in due course either join your opinion or concur in the judgment by expressing an alternate approach.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 3, 1982

No. 81-38 Crawford v. Board of Education of the City of Los Angeles

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference