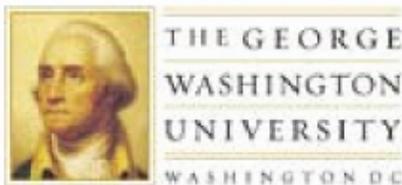


The Burger Court Opinion Writing Database

Washington v. Seattle School District No. 1
458 U.S. 457 (1982)

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



71AB

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

CHAMBERS OF
THE CHIEF JUSTICE

March 31, 1982

Re: No. 81-9 - Washington v. Seattle

MEMORANDUM TO THE CONFERENCE:

I vote to reverse in this case and Bill Brennan
will assign.

Regards,

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

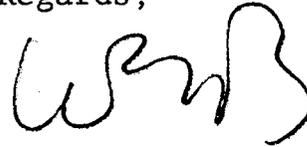
April 2, 1982

Re: No. 81-9 - Washington v. Seattle School District
No. 1

Dear Lewis:

Would you be disposed to take on a dissent in
this case?

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

cc: Justice Rehnquist
Justice O'Connor

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

CHAMBERS OF
THE CHIEF JUSTICE

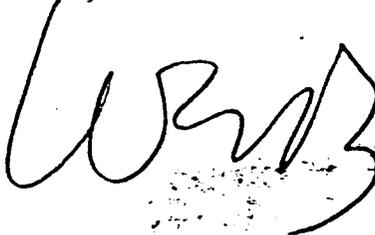
June 18, 1982

Re: 81-9 - Washington v. Seattle School Dist. #1

Dear Lewis:

I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written over a faint, circular embossed seal.

Justice Powell

Copies to the Conference

7M

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

✓

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 2, 1982

RE: No. 81-9 Washington v. Seattle School District

Dear Chief:

Harry has agreed to take the opinion for the Court
in the above.

Sincerely,

The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1982

RE: No. 81-9 Washington v. Seattle School District

Dear Harry:

I agree.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1982

Re: 81-9 - Washington v.
Seattle School District No. 1

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1982

Re: No. 81 - 9 - Washington v. Seattle School District

Dear Harry:

Please join me.

Sincerely,

JM.

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1982

Re: No. 81-9 - Washington v. Seattle School District No. 1

Dear John:

Your suggestion, of course, is acceptable, and the change will be made to embrace your stated language.

Sincerely,



Justice Stevens

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 DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-9

WASHINGTON, ET AL., APPELLANTS *v.* SEATTLE
 SCHOOL DISTRICT NO. 1 ET AL

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

[June —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

We are presented here with an extraordinary question: whether an elected local school board may use the Fourteenth Amendment to *defend* its program of busing for integration from attack by the State.

I

A

Seattle School District No. 1 (District), which is largely coterminous with the city of Seattle, Wash., is charged by state law with administering 112 schools and educating approximately 54,000 public school students. About 37% of these children are of Negro, Asian, American Indian, or Hispanic ancestry. Because segregated housing patterns in Seattle have created racially imbalanced schools, the District historically has taken steps to alleviate the isolation of minority students; since 1963, it has permitted students to transfer from their neighborhood schools to help cure the District's racial imbalance.¹

¹In 1971, the District implemented a program of mandatory reassignments to integrate certain of its middle schools. This prompted an attempt to recall four school board members who had voted for the program. That attempt narrowly failed. See 473 F. Supp. 996, 1006 (WD Wash.

STYLISTIC CHANGES

4 p. 9

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 3 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-9

WASHINGTON, ET AL., APPELLANTS *v.* SEATTLE
 SCHOOL DISTRICT NO. 1 ET AL

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

[June —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

We are presented here with an extraordinary question: whether an elected local school board may use the Fourteenth Amendment to *defend* its program of busing for integration from attack by the State.

I

A

Seattle School District No. 1 (District), which is largely coterminous with the city of Seattle, Wash., is charged by state law with administering 112 schools and educating approximately 54,000 public school students. About 37% of these children are of Negro, Asian, American Indian, or Hispanic ancestry. Because segregated housing patterns in Seattle have created racially imbalanced schools, the District historically has taken steps to alleviate the isolation of minority students; since 1963, it has permitted students to transfer from their neighborhood schools to help cure the District's racial imbalance.¹

¹In 1971, the District implemented a program of mandatory reassignments to integrate certain of its middle schools. This prompted an attempt to recall four school board members who had voted for the program. That attempt narrowly failed. See 473 F. Supp. 996, 1006 (WD Wash).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-9 - Washington v. Seattle School Dist. No. 1

In response to Lewis' dissent, now in print, I shall make the following changes in the Court's opinion:

1. Footnote 17 on page 17 will be revised to read:

"¹⁷JUSTICE POWELL finds Hunter completely irrelevant, dismissing it with the conclusory statement that 'the political system [of Washington] has not been redrawn or altered.' Post, at 10 (emphasis in original). But the dissent entirely fails to address the relevance of Hunter to the reallocation of decisionmaking authority worked by Initiative 350. The evil condemned by the Hunter Court was not the particular political obstacle of mandatory referenda imposed by the Akron charter amendment; it was, rather, the comparative structural burden placed on the political achievement of minority interests. Thus, in Hunter, the procedures for enacting racial legislation were modified in such a way as to place effective control in the hands of the city-wide electorate. Similarly here, the power to enact racial legislation has been reallocated. In each case, the effect of the challenged action was to redraw decisionmaking authority over racial matters -- and only over racial matters -- in such a way as to place comparative burdens on minorities. While JUSTICE POWELL and the United States find it crucial that the proponents of integrated schools remain free to use Washington's initiative system to further their ends, that was true in Hunter as well: proponents of open housing were not barred from invoking Akron's initiative procedures to repeal the charter amendment, or to enact fair housing legislation of their own. It surely is an excessively formal exercise, then, to argue that the procedural revisions at issue in Hunter imposed special burdens on minorities, but that the selective allocation of decisionmaking authority worked by Initiative 350 does not erect comparable political obstacles. Indeed, Hunter would have been virtually identical to this case had the Akron charter amendment simply barred the city council from passing any fair housing ordinance, as Initiative 350 forbids the use of virtually all mandatory desegregation strategies. Surely, however, Hunter would not have come out the other way had the charter amendment

made no provision for the passage of fair housing legislation, instead of subjecting such legislation to ratification by referendum.

"The United States also would note that Initiative 350's 'modification of state policy [was] not the result of any unusual political procedure,' Brief for the United States 30, for initiatives and referenda are often used by the Washington electorate. But that observation hardly serves to distinguish this case from Hunter, since the fair housing charter amendment was added through the unexceptional use of Akron's initiative procedure. See 393 U.S., at 387."

2. At the end of the penultimate sentence of the full paragraph on page 18, following "393," I shall drop a footnote (new 18) reading as follows:

"¹⁸Despite the force with which it is written, then, JUSTICE POWELL's essay on 'the heretofore unquestioned right of a State to structure the decisionmaking authority of its government,' post, at 6 -- as well as his observations on a State's right to repeal programs designed to eliminate de facto segregation -- is largely beside the point. The State's power has not been questioned at any point during this litigation. The single narrow question before us is whether the State has exercised its power in such a way as to place special, and therefore impermissible, burdens on minority interests."

3. On page 22, following the citation of Lee v. Nyquist, in the fifth line, I shall add the following footnote (to be numbered 23):

"²³Throughout his dissent, JUSTICE POWELL insists that the Court has created a 'vested constitutional right to local decisionmaking,' post, at 11, that under our holding 'the people of the State of Washington apparently are forever barred from developing a different policy on mandatory busing where a School District previously has adopted one of its own,' id., at 11, n.13, and that today's decision somehow raises doubts about 'the authority of a State to abolish school boards altogether.' Id., at 11. See also id., at 8, and at 11, n.14. These statements evidence a basic misunderstanding of our decision. Our analysis vests no rights, and has nothing to do with whether school board action predates that taken by the State. Instead, what we find objectionable about Initiative 350 is the comparative burden it imposes on minority participation in the

political process -- that is, the racial nature of the way in which it structures the process of decisionmaking. It is evident, then, that the horribles paraded by the dissent, post, at 11, n.13 -- which have nothing to do with the ability of minorities to participate in the process of self-government -- are entirely unrelated to this case. It is equally clear, as we have noted at several points in our opinion, that the State remains free to vest all decisionmaking power in state officials, or to remove authority from local school boards in a race-neutral manner."

4. On page 26, I shall modify the final sentence of the full paragraph to read:

"And legislation of the kind challenged in Hunter similarly falls into an inherently suspect category."

5. On page 27, following the second full sentence after the words "based on race," I shall add a footnote (to be numbered 29) reading as follows:

"²⁹ Thus we do not hold, as the dissent implies, post, at 7, that the State's attempt to repeal a desegregation program creates a racial classification, while 'identical action' by the Seattle School Board does not. It is the State's race-conscious restructuring of its decisionmaking process that is impermissible, not the simple repeal of the Seattle Plan."

Other footnotes would be renumbered accordingly.

Harry

- Pages: 17-18, 19, 22-23, 27, 28 -
 - Footnotes 19-31 Renumbered

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-9

WASHINGTON, ET AL., APPELLANTS *v.* SEATTLE
 SCHOOL DISTRICT NO. 1 ET AL

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

[June —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

We are presented here with an extraordinary question: whether an elected local school board may use the Fourteenth Amendment to *defend* its program of busing for integration from attack by the State.

I

A

Seattle School District No. 1 (District), which is largely coterminous with the city of Seattle, Wash., is charged by state law with administering 112 schools and educating approximately 54,000 public school students. About 37% of these children are of Negro, Asian, American Indian, or Hispanic ancestry. Because segregated housing patterns in Seattle have created racially imbalanced schools, the District historically has taken steps to alleviate the isolation of minority students; since 1963, it has permitted students to transfer from their neighborhood schools to help cure the District's racial imbalance.¹

¹In 1971, the District implemented a program of mandatory reassignments to integrate certain of its middle schools. This prompted an attempt to recall four school board members who had voted for the program. That attempt narrowly failed. See 473 F. Supp. 996, 1006 (WD Wash.

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 24, 1982

Re: No. 81-9 Washington v. Seattle School District No. 1

Dear Lewis:

I shall have no further response to your footnote addition in this case. Therefore, it is ready to come down with Crawford.

Sincerely,



Justice Powell

cc: The Chief Justice

April 5, 1982

81-9 Washington v. Seattle School District

Dear Chief:

I will be glad to undertake a dissent in this case.

Sincerely,

The Chief Justice

lfp/ss

cc: Justice Rehnquist
Justice O'Connor

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

From: Justice Powell

Circulated: JUN 17 1982

Recirculated: _____

Washington v. Seattle School District: No. 81-9

Justice Powell, dissenting.

The people of the State of Washington, by a two to one vote, have adopted a neighborhood school policy. The policy is binding on local school boards but in no way affects the authority of state or federal courts to order school transportation to remedy violations of the Fourteenth Amendment. Nor does the policy affect the power of local school districts to establish voluntary transfer programs for racial integration or for any other purpose.

In the absence of a constitutional violation, no decision of this Court compels a school district to adopt

1,3-4,6-13

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

Printed
 1st DRAFT
 ^

SUPREME COURT OF THE UNITED STATES

No. 81-9

WASHINGTON, ET AL., APPELLANTS v. SEATTLE
 SCHOOL DISTRICT NO. 1 ET AL.

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

[June —, 1982]

JUSTICE POWELL, dissenting.

The people of the State of Washington, by a two to one vote, have adopted a neighborhood school policy. The policy is binding on local school districts but in no way affects the authority of state or federal courts to order school transportation to remedy violations of the Fourteenth Amendment. Nor does the policy affect the power of local school districts to establish voluntary transfer programs for racial integration or for any other purpose.

In the absence of a constitutional violation, no decision of this Court compels a school district to adopt or maintain a mandatory busing program for racial integration.¹ Accordingly, the Court does not hold that the adoption of a neighborhood school policy by *local* school districts would be unconstitutional. Rather, it holds that the adoption of such a policy at the *State* level—rather than at the local level—violates the Equal Protection Clause of the Fourteenth Amendment.

I dissent from the Court's unprecedented intrusion into the structure of a state government. The School Districts in

¹Throughout this dissent, I use the term "mandatory busing" to refer to busing—or mandatory student reassignments—for the purpose of achieving racial integration.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 23, 1982

81-9 Washington v. Seattle School District

Dear Harry:

In view of the additions made in your opinion for the Court, I will add - in response - the two notes I now circulate.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

The following two footnotes will be added to my dissenting opinion in Washington v. Seattle School District No. 1--81-9.

Add as new footnote 13 at page 11:

The Court repeatedly states that the effect of Initiative 350 is "to redraw decisionmaking authority over racial matters--and only over racial matters--in such a way as to place comparative burdens on minorities." Ante, at ____, n. 17 (emphasis added). But the decision by the State to exercise its authority over the schools and over racial matters in the schools does not place a comparative burden on racial minorities. In Hunter, as we have understood it, "fair housing legislation alone was subject to an automatic referendum requirement." Gordon v. Lance, 403 U.S. 1, 5 (1971) (emphasis added). By contrast, Initiative 350 merely places mandatory busing among the much larger group of matters--covering race relations, administration of the schools, and a variety of other matters--addressed at the State level. See note ____, infra. Racial minorities, if indeed they are burdened by Initiative 350, are not comparatively burdened. In this respect, they are in the same position as any other group of persons who are disadvantaged by regulations drawn at the State level.

Add at page 12, as a new footnote 15:

15. Responding to this dissent, the Court denies that its opinion limits the authority of the people of the State of Washington and the Legislature to control or regulate school boards. It further states that "the State remains free to vest all decisionmaking power in state officials, or to remove authority from local school boards in a race-neutral manner." Ante, at ____, n. 23. These are puzzling statements that seem entirely at odds with much of the text of the Court's opinion. It will be surprising if officials of the State of Washington--with the one exception mentioned below--will have any clear idea as to what the State now lawfully may do.

The Court does say that "[i]t is the State's race-conscious restructuring of its decisionmaking process that is impermissible, not the simple repeal of the Seattle plan". Ante, at ____, n. 29. Apparently the Court is saying that, despite what else may be said in its opinion, the people of the State--or the State Legislature--may repeal the Seattle plan, even though neither the people nor the legislature validly may prescribe statewide standards. I perceive no logic in--and certainly no constitutional basis for--a distinction between repealing the Seattle plan of mandatory busing and establishing a statewide policy to the same effect. The people of a State have far greater interest in the general problems associated with compelled busing for purpose of integration than in the plan of a single school board.

11-13

Footnotes 13-17 Renumbered

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

^{2nd}
~~1st~~ Printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-9

WASHINGTON, ET AL., APPELLANTS *v.* SEATTLE
 SCHOOL DISTRICT NO. 1 ET AL.

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

[June —, 1982]

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join, dissenting.

The people of the State of Washington, by a two to one vote, have adopted a neighborhood school policy. The policy is binding on local school districts but in no way affects the authority of state or federal courts to order school transportation to remedy violations of the Fourteenth Amendment. Nor does the policy affect the power of local school districts to establish voluntary transfer programs for racial integration or for any other purpose.

In the absence of a constitutional violation, no decision of this Court compels a school district to adopt or maintain a mandatory busing program for racial integration.¹ Accordingly, the Court does not hold that the adoption of a neighborhood school policy by *local* school districts would be unconstitutional. Rather, it holds that the adoption of such a policy at the *State* level—rather than at the local level—violates the Equal Protection Clause of the Fourteenth Amendment.

I dissent from the Court's unprecedented intrusion into the

¹Throughout this dissent, I use the term "mandatory busing" to refer to busing—or mandatory student reassignments—for the purpose of achieving racial integration.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 21, 1982

Re: No. 81-9 Washington v. Seattle School Dist. #1

Dear Lewis:

Please join me in your dissent.

Sincerely,

WHR / JB

Justice Powell

cc: The Conference

.85 1055 1010

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1982

Re: 81-9 - Washington v. Seattle School
Dist.

Dear Harry:

Your opinion is excellent and I will join it. I have a slight problem with the second sentence of part IIA on p. 9 because of the position I will be taking concerning vote dilution in Rogers v. Lodge. I wonder if you could see your way clear to revising the sentence to read something like this: "It is beyond dispute, of course, that given racial or ethnic groups may not be denied the franchise, or precluded from entering into the political process in a reliable and meaningful manner."

The language I have suggested is found on p. 767 of the opinion in White v. Register. My problem is with the intentional dilution concept.

On the whole I think your opinion handles a very difficult case most effectively.

Respectfully,

Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1982

Re: 81-9 - Washington v. Seattle School
District

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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. 81-9 Washington v. Seattle School District
No. 1

Dear Harry,

I will await further writing.

Sincerely,



Justice Blackmun

Copies to the Conference

95

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 18, 1982

No. 81-9 Washington v. Seattle School Dist. #1

Dear Lewis,

Please join me in your dissent.

Sincerely,



Justice Powell

Copies to the Conference