The Burger Court Opinion Writing Database

Pennhurst State School and Hospital v. Halderman

465 U.S. 89 (1984)

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

I agree

February 4, 1983

Re: No. 81-2101 - Pennhurst State School and Hospital
v. Halderman

MEMORANDUM TO THE CONFERENCE:

One of the issues in this case -- namely whether the district court properly appointed a Special Master to monitor compliance with the district court's orders -- may possibly be moot. Under the terms of an order entered by the District Court on August 12, 1982, the Special Master was to be discharged as of December 31, 1982. Frank Lorson, who has been in contact with the Solicitor General's office, informs me that in fact, the Special Master's office was disbanded at that time and no longer exists. Accordingly, I suggest we request the parties to submit supplemental briefs on the question of mootness.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

February 28, 1983

MEMORANDUM TO THE CONFERENCE

RE: 81-2101 - Pennhurst State School and Hospital v. Halderman

My vote on this case is "Reverse".

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1983

RE: Case No. 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Lewis:

I will defer acting until I see your response to John.

Regards,

Justice Powell

Copies to the Conference

This was sent confidentially

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

CHAMBERS OF
THE CHIEF JUSTICE

June 23, 1983

PERSONAL

See my note p 2.

Re: 81-2101 - Pennhurst v. Halderman

Dear Lewis:

I send to you only my draft of a concurrence. I will defer circulation until I get back and have a chance to let you shoot me down!

Regards,

WEB

Justice Powell

(PS Not proofed by EWB before departure)

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

CHAMBERS OF
THE CHIEF JUSTICE

June 27, 1983

Personal

Re: No. 81-2101 - **Pennhurst** v. **Halderman**

Dear Lewis:

My apologies must go to all for my taking so long to come down with finality on this case, which I have found one of the most difficult of the Term. Particularly I apologize to you for you have labored hard and long.

I can brush aside all the issues save the 11th Amendment, because I think the case can be resolved on narrow grounds without overruling numerous precedents on which the Court has long relied. Under your draft, whenever a suit is brought against a state official, a federal court faced with an open question of federal law would be without authority to base its decision on state law, even when the applicable principles of state law are well-settled. John has pointed out this result requires litigants to bifurcate their claims and proceed in two tribunals simultaneously, with a lot of duplicated effort. I cannot believe that this is what the Framers of Article III or the Eleventh Amendment intended.

not so

Key to CJ's view

This case, among others, illustrates why we should not have 150 plus full scale opinions to deal with in a single year.

Regards,

WEB

Justice Powell

P.S. Let be "clear" around 2:00 if you feel it is worth taking time for further discussion

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

CHAMBERS OF
THE CHIEF JUSTICE

June 30, 1983

MEMORANDUM TO THE CONFERENCE

RE: 81-2101 - Pennhurst State School & Hospital v. Halderman

It appears that a majority wish to have the Eleventh Amendment and comity issues argued.

Regards,

WEB

cc: Al Stevas

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

CHAMBERS OF
THE CHIEF JUSTICE

June 30, 1983

Re: 81-2101 - Pennhurst State School & Hospital v. Halderman

Dear John:

Your memo of June 29 leads me to agree that we do not need the Special Master issues argued. I would vote to eliminate that subject from the reargument.

I am inclined to let the comity issue remain, although, as you know, my chief concern has been on the Eleventh Amendment.

Response from other Chambers is requested.

Regards,

WEB

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1983

RE: No. 81-2101 Pennhurst State School and Hospital v. Halderman

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 7, 1983

RE: No. 81-2101 Pennhurst State School and Hospital v. Halderman

Dear Thurgood, Harry and John:

We four are in dissent in the above. Will you, John, be willing to undertake the dissent?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

Justice Stevens

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

From: Justice Brennan

Circulated: JUN 22 1983

Recirculated: _____

Pennhurst State School & Hospital v. Halderman

No. 81-2101

JUSTICE BRENNAN, dissenting.

I join JUSTICE STEVENS' dissent. In any event, I adhere to the view that the Eleventh Amendment "bars federal court suits against States only by citizens of other States." Yeomans v. Kentucky, 423 U.S. 983, 984 (1975) (BRENNAN, J., dissenting from denial of certiorari). See Employees v. Missouri Public Health Dept., 411 U.S. 279, 298 (1973) (BRENNAN, J., dissenting).

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

From: **Justice Brennan**

Circulated: JUN 22 1983

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHUST 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

[June ——, 1983]

JUSTICE BRENNAN, dissenting.

I join JUSTICE STEVENS' dissent. In any event, I adhere to the view that the Eleventh Amendment "bars federal court suits against States only by citizens of other States." *Yeomans* v. *Kentucky*, 423 U. S. 983, 984 (1975) (BRENNAN, J., dissenting from denial of certiorari). See *Employees* v. *Missouri Public Health Dept.*, 411 U. S. 279, 298 (1973) (BRENNAN, J., dissenting).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 30, 1983

No. 81-2101

Pennhurst State School
& Hospital v. Halderman

Dear Chief,

I agree with John's suggestion that the reargument be limited to the Eleventh Amendment issue.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 27, 1983

Re: No. 81-2101, Pennhurst State School v. Halderman

Dear Lewis,

Although it is likely that I shall join your circulating draft, I would rather await John's dissent. Meanwhile, for what they may be worth, I do have two suggestions.

First, I hope you would delete the part of footnote 13, page 13, which discusses whether a federal court could order the State to pay damages to other plaintiffs due to the presence of the United States and which questions whether the United States has independent authority to assert federal-law claims? I had thought it settled since In re Debs, 158 U.S. 564 (1895), that the United States has the right to sue to protect the public interest. Our more recent cases in which the United States initiated suit or intervened and was then left as the sole remaining party seem to confirm the point. E.g., New York Times Co. v. United States, 403 U.S. 713 (1971); Pasadena City Bd. of Education v. Spangler, 427 U.S. 424, 430-431 (1976). Here the United States' ability to litigate these issues is on a particularly strong footing since Congress expressly authorized the Attorney General to bring such actions. See Civil Rights of Institutionalized Persons Act, 94 Stat. 349, 42 U.S.C. 1997. In any event, consideration of whether the United States has standing to bring federal-law claims is not necessary to decide this case. As you say, it is quite clear that the United States does not have standing to assert the state-law claims of third parties.

Second, I would prefer not to say that "the express rationale of Ex parte Young is not logically persuasive." (p. 14) I am not sure the idea that the state cannot commit an unconstitutional act is illogical on its face. In a sense, it is another way of expressing that the Young doctrine is derived from the supremacy of federal law. But even if you are correct, I would prefer not to undercut so directly one of the Court's landmark decisions. For the purposes of this case, it seems to be enough to say that the rule of Ex Parte Young is predicated on the supremacy of federal rights.

Sincerely,

Byron

Mark -
Of course!
We have to
have him

Justice Powell

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1983

Re: 81-2101 - Pennhurst State School
and Hospital v. Halderman

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

cc: The Conference

cpm

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

June 27, 1983

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Chief,

Although I do not have the opinion in this case, I have joined Lewis and was somewhat surprised when you indicated in conference that you would concur only in result. Since the issue is jurisdictional and will have a large impact on the work of the federal courts, the case is important, and I hope there will be a majority opinion one way or the other---hopefully along Lewis's line. I should say that I have talked to Lewis about the status of the case.

I think that Ex Parte Young was a wise decision, and I accept it. It nevertheless excludes from the reach of the Eleventh Amendment suits claiming that state officers, who are doing exactly what a state statute tells them to do, are not to be treated as state actors if it is claimed that the statute on its face or as applied is unconstitutional under the Federal Constitution. But would the Eleventh Amendment also not bar suits against state officers who purport to be exercising the very authority given them by a state law but who, it is claimed, have misconstrued the statute? Whatever might have been the law before Larson, 337 U.S. 682 (1949), I thought that case had settled the issue: as long as the officer was acting within the range of his authority, the Amendment barred suit against him in federal court.

Even if Larson did not settle it, I see little merit in permitting a suit in federal court brought by a non-resident against a state officer and seeking an injunction on the ground that the defendant is misapplying a state statute. The Eleventh Amendment should bar such a suit, but under John's approach, it would not. If it would, however, what about the case where the suit alleges that the statute is unconstitutional and that the state officer does not understand the statute that he is administering? That is Pennhurst, of course, and I agree with Lewis that the doctrine of pendent jurisdiction is an insufficient reason to override the Eleventh Amendment's bar to a suit against a state officer based solely on state laws grounds.

Since I am treading on your territory, I would understand if you consigned this to the wastebasket.

Cheers,

Byron

The Chief Justice

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

September 7, 1983

Re: 81-2101 - Pennhurst State School
and Hospital v. Halderman

Dear Al,

As I see it, this motion should be postponed to the merits.

Sincerely,

Mr. Alexander Stevas
Clerk

cpm

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 20, 1983

Re: No. 81-2101-Pennhurst State School & Hospital v. Halderman

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 30, 1983

Re: No. 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Chief:

I would prefer to limit to the Eleventh Amendment issue.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1983

Re: No. 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Chief:

I agree with your suggestion about requesting supplemental briefs on the question of mootness.

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

May 9, 1983

Re: No. 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Lewis:

As you have surmised, I shall await the dissent in this case.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 30, 1983

Re: No. 81-2101, Pennhurst State School and Hospital V. Halderman

Dear Chief:

My preference is to confine reargument to the Eleventh Amendment issue.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 9, 1983

81-2101 Pennhurst State School v. Halderman

Dear Chief:

I have no objection to requesting supplemental briefs on the question of mootness.

Sincerely,

L

The Chief Justice

lfp/ss

cc: The Conference

p. 4

APR 14 1983

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

From: **Justice Powell**

Circulated: APR 14 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHURST STATE SCHOOL & 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

[April ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law.

I

This litigation, here for the second time, concerns the conditions of care at petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the mentally retarded. See *Pennhurst State School & Hospital* v. *Halderman*, 451 U. S. 1 (1981). Although the litigation's history is set forth in detail in our prior opinion, see *id.*, at 5–10, it is necessary for purposes of this decision to review that history.

This suit originally was brought in 1974 by respondent Terri Lee Halderman, a resident of Pennhurst, in the District Court for the Eastern District of Pennsylvania. Ultimately, plaintiffs included a class consisting of all persons who were or might become residents of Pennhurst; the Pennsylvania Association for Retarded Citizens (PARC); and the United States. Defendants were Pennhurst and various Pennhurst officials; the Pennsylvania Department of Public Welfare and several of its officials; and various county commissioners, county mental retardation administrators, and

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

APR 2 8 1983

pp. 13, 14

From: **Justice Powell**

Circulated: _____

Recirculated: APR 2 8 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHURST STATE SCHOOL & 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

[May ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law.

I

This litigation, here for the second time, concerns the conditions of care at petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the mentally retarded. See *Pennhurst State School & Hospital* v. *Halderman*, 451 U. S. 1 (1981). Although the litigation's history is set forth in detail in our prior opinion, see *id.*, at 5–10, it is necessary for purposes of this decision to review that history.

This suit originally was brought in 1974 by respondent Terri Lee Halderman, a resident of Pennhurst, in the District Court for the Eastern District of Pennsylvania. Ultimately, plaintiffs included a class consisting of all persons who were or might become residents of Pennhurst; the Pennsylvania Association for Retarded Citizens (PARC); and the United States. Defendants were Pennhurst and various Pennhurst officials; the Pennsylvania Department of Public Welfare and several of its officials; and various county commissioners, county mental retardation administrators, and

June 16, 1983

81-2101 Pennhurst v. Halderman

Dear Chief:

In reviewing the status of my five remaining Court cases, I have "Courts" in all of them except Pennhurst.

When I first circulated my opinion in Pennhurst, Byron - who had voted with you and me at Conference - wrote me on April 27:

> "Although it is likely that I shall join your circulating draft, I would rather await John's dissent."

The dissent has not yet been circulated, but the "grapevine" news is that it may reach us any day.

If, as I hope, you are still "with me", it might be a plus with Byron for your "join" to be circulated so that his vote then would be decisive.

In my other four cases - with one exception - I am awaiting dissents from other Chambers.

Sincerely,

The Chief Justice

lfp/ss

June 20, 1983

CONFIDENTIAL

81-2101 Pennhurst v. Halderman

Dear Chief:

I understand, of course, your preferring to see my response to John before you come to rest in this case.

I now have responded at some length in the third draft of Pennhurst circulated today. As you know, Byron has joined me today, and in a conversation he expressed the view that I had convincingly answered John's opinion.

In your longhand postscript to me, you said that the "breadth of [my] opinion gives [you] pause". If you are still in doubt after seeing my quite specific answers to John, I would like the opportunity to visit with you for ten minutes. This case will have a major effect on the continuing vitality of the Eleventh Amendment.

If you have suggestions for clarifying my opinion -- or if there are other changes that would resolve your doubts -- I will of course consider them. I need your vote for a Court.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 20, 1983

81-2101 Pennhurst v. Halderman

MEMORANDUM TO THE CONFERENCE:

I will circulate responses to John's dissent today.

L.F.P.

L.F.P., Jr.

ss

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

From: **Justice Powell**

Circulated: _____

Recirculated: 6/20/83

p. 7-8, 11, 15-18, 19, 23-24
(fns 15-26 renumbered)

JUN 19 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHURST STATE SCHOOL & 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

[June ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law.

I

This litigation, here for the second time, concerns the conditions of care at petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the mentally retarded. See *Pennhurst State School & Hospital* v. *Halderman*, 451 U. S. 1 (1981). Although the litigation's history is set forth in detail in our prior opinion, see *id.*, at 5–10, it is necessary for purposes of this decision to review that history.

This suit originally was brought in 1974 by respondent Terri Lee Halderman, a resident of Pennhurst, in the District Court for the Eastern District of Pennsylvania. Ultimately, plaintiffs included a class consisting of all persons who were or might become residents of Pennhurst; the Pennsylvania Association for Retarded Citizens (PARC); and the United States. Defendants were Pennhurst and various Pennhurst officials; the Pennsylvania Department of Public Welfare and several of its officials; and various county commissioners, county mental retardation administrators, and

June 21, 1983

CONFIDENTIAL

81-2101 Pennhurst v. Halderman

Dear Chief:

Your uncertainty in this case troubles me so much that I write once more - hoping you will bear with me.

The two basic issues at stake here are: (i) the jurisdictional character of the Eleventh Amendment, and (ii) pendent jurisdiction of federal courts. Both implicate federalism. I have rechecked the cases on these two issues decided over the past decade, and this confirms that in each of the important cases you and I have been 100% together.

I start with the federal jurisdiction cases:

O'Shea v. Littleton, 414 U.S. 488 (1974); Rizzo v. Goode, 423 U.S. 362 (1976); and City of Los Angeles v. Lyons, No. 81-1064 (Apr. 20, 1983). These limited the opportunity of litigants to challenge allegedly unconstitutional state and local policies in federal courts. Edelman v. Jordan, 415 U.S. 651 (1974), of course, was a major Eleventh Amendment jurisdiction case in which you and I were shoulder to shoulder with Bill Rehnquist. See also Fair Assessment in Real Estate Assn. v. McNary, 454 U.S. 100 (1981) (federal courts have no jurisdiction to hear §1983 challenges to state tax systems).

In each of these cases, we recognized the importance of federalism and required litigants to take claims of federal rights to state courts. In this key respect, these cases were "broader" than Pennhurst, as it will hold only that litigants must take state claims to state courts. The intrusion on federalism would reach a new level if a federal court could tell state officials how to comply with state law.

Now, for the pendent jurisdiction cases:

Aldinger v. Howard, 427 U.S. 1 (1976) (federal courts have no pendent-party jurisdiction on state-law mat-

ters); and Hagans v. Lavine, 415 U.S. 528 (1974) (you joined my dissent arguing that a majority of the Court had unnecessarily expanded Siler and Gibbs). You may also note that Byron, who wrote the Court's opinion in Hagans, is with me here.

In sum, since we have uniformly been together in all of these cases I have thought my opinion in Pennhurst accords fully with your views. Also, it is consistent with the cases decided since you became Chief Justice. And I am completely convinced that my opinion is correct on the Eleventh Amendment issues. No doubt you have noted that John's opinion - though persuasively written - hinges almost altogether on a handful of 19th Century cases - cases that this Court in Larson carefully and explicitly declined to follow.

* * *

If we do not reverse CA3 on the above question, the Court will have to address two other "sticky" issues that I was able to avoid: (i) the comity argument, and (ii) the question whether the DC abused its discretion in appointing the Special Masters, and taking control of the state institution.

Of course, I understand that each of us must make his own judgments. If the case were not so important to the principle of federalism I would not be subjecting you to additional reading. You have my apologies in any event.

Sincerely,

The Chief Justice

lfp/ss

pp 7, 16-18

JUN 22 1983

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 22 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHURST STATE SCHOOL & 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

[June ——, 1983]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law.

I

This litigation, here for the second time, concerns the conditions of care at petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the mentally retarded. See *Pennhurst State School & Hospital* v. *Halderman*, 451 U. S. 1 (1981). Although the litigation's history is set forth in detail in our prior opinion, see *id.*, at 5–10, it is necessary for purposes of this decision to review that history.

This suit originally was brought in 1974 by respondent Terri Lee Halderman, a resident of Pennhurst, in the District Court for the Eastern District of Pennsylvania. Ultimately, plaintiffs included a class consisting of all persons who were or might become residents of Pennhurst; the Pennsylvania Association for Retarded Citizens (PARC); and the United States. Defendants were Pennhurst and various Pennhurst officials; the Pennsylvania Department of Public Welfare and several of its officials; and various county commissioners, county mental retardation administrators, and

June 25, 1983

81-2101 Pennhurst v. Halderman

Dear Chief:

My thanks for sending me a copy of a draft of a possible concurrence, and giving me an opportunity to "shoot it down." I certainly will try!

I must say that it comes as a disquieting surprise to find - on June 23 - that from your perspective I have been addressing the wrong issue all along. This case was argued on February 22, was discussed and voted on at Conference on February 25, and was assigned to me to write on March 4. My opinion was circulated on April 14. From the filing of the petition for cert until seeing your draft, I have understood that we viewed the case - as did CA3 and the parties - as primarily an Eleventh Amendment case.

The Conference discussion focused on the Eleventh Amendment. (See my attached Conference notes.) Only Sandra expressed a willingness to decide the case on the comity ground, and others indicated either a negative reaction or failed to mention it at all. All four of us who voted to reverse agreed to do so under the Eleventh Amendment.

You simply passed at Conference. Thereafter, you voted to "reverse" without stating a reason, and assigned the case to me. With the exception of the abortion cases, I have devoted substantially more time to Pennhurst than to any other opinion assigned to me this Term. Naturally, I wrote it on the Eleventh Amendment issue as this was the only issue decided by the Conference. Moreover, the basic analysis in my opinion is the same Eleventh Amendment analysis advanced by petitioners.

When I circulated my first draft on April 14, I assumed your support for two reasons: (i) I wrote the opinion fully in accord with the Conference vote, and - more fundamentally - (ii) you, WHR, and I have had a long commitment to federalism and to preserving the vitality of the Eleventh Amendment.

If you should conclude to concur only in the judgment, and then only on an issue not decided at Conference, I am left - in the last week of the Term - in a most unwelcome position that I could not have foreseen. As you would agree with John that there is federal jurisdiction, my opinion

would be a dissent. I would have the problem of revising it substantially, and of answering you.

Moreover, I am concerned about the effect on the Court as an institution of another case - and quite an important one - in which we fail to provide any guidance for the future. This already has occurred in the chaos of Guardians Association, and to a significant extent in Bradshaw. At least in those cases the Justices addressed the same issues.

If this case comes down 4-1-4, no one will know what the Court has decided. You would be the only Justice discussing the comity issue, unless fresh opinions are written. But writing in the last days of the Term would be particularly difficult. This Court has never articulated standards that govern the application of comity to pendent state law claims against state officials. Yet I suppose John and I both would have to write something.

Unless I can persuade you, I suppose one possibility would be a reargument. There are, however, two strong reasons to view this as a last resort: (a) with the possible exception of Sandra, seven members of the Court wish to decide the important Eleventh Amendment issue and have reached firm decisions on it; and (b) this case has been in litigation already for nine years. A reargument probably would extend it for another couple of years. On the basis of the firm views of the Justices on the Eleventh Amendment issue, the outcome of the reargument is unlikely to be different. The comity issue was expressly or implicitly rejected at Conference by John, Bill Brennan, Thurgood, and Harry. I know that Byron also thinks it has little merit - and I am doubtful.

I am attaching to this letter (already too long!) a brief memorandum that comments specifically on the comity draft you sent me. If you have the opportunity to read it, I think it will assist you in coming to your decision.

Finally, I return to what is fundamental for me, and I had thought also for you: the reinforcing of the substantive principle of federalism - especially now that we have the rare opportunity afforded by this case. Few things are more important to that principle than the protection the Eleventh Amendment was intended to afford states against disruptive litigation in federal courts.

Sincerely,

The Chief Justice
lfp/ss
Addendum attached

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 30, 1983

81-2101 Pennhurst State School & Hospital v. Halderman

Dear Chief:

I would prefer to have the reargument cover the comity issue as well as the Eleventh Amendment issue.

Sincerely,

Lewis

The Chief Justice

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 10, 1983

Re: No. 81-2101 Pennhurst State School and Hospital v. Halderman

Dear Chief:

I, too, agree with your suggestion about requesting supplemental briefs on the question of mootness. Since the case is set for the first week of argument in February, and the Conference will not have an opportunity to discuss your proposal until the preceding Friday, I suppose the best way to go about it would be to ask for post-argument briefs. I would not favor taking the case from the calendar simply because of the possibility that one issue in it might be moot.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1983

Re: No. 81-2101 Pennhurst State School & Hospital v. Halderman

Dear Lewis:

Please join me.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 30, 1983

Re: No. 81-2101 Pennhurst State School & Hospital v. Halderman

Dear Chief:

While I have no objection to deleting the Special Master issue from those to be reargued, I think the "comity" issue as well as the Eleventh Amendment issue should remain in the case.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1983

Re: 81-2101 - Pennhurst State School
v. Halderman

Dear Bill:

I shall be happy to undertake the dissent in this case.

Respectfully,

Justice Brennan

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1983

Re: 81-2101 - Pennhurst State Sch. & Hosp. v. Halderman

Dear Lewis:

In due course I shall circulate a dissent.

Respectfully,

JPS

Justice Powell

Copies to the Conference

June 17, 1983

[1$2101i,1$2101if]

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: JUN 17 '83

81-2101 - Pennhurst State School & Hospital v. Halderman

Recirculated: _____

JUSTICE STEVENS, dissenting.

The question whether a federal court may award injunctive relief against state officials on the basis of state law has been answered by this Court many times in the past. The affirmative answer to that question is supported by sound reasons of judicial administration, by the doctrines of stare decisis and law of the case, and by a correct understanding of the doctrine of sovereign immunity. A negative answer will place additional burdens on the judiciary and on the victims of unlawful conduct by state officials. It will also require unnecessary determinations of constitutional questions, a result inimical to sound principles of judicial restraint. I therefore respectfully dissent.

I

In one of the most respected opinions ever written by a Member of this Court, Justice Brandeis wrote:

> "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed

Changes from atex draft pp. 6, 10, 11, 12, 15

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

From: **Justice Stevens**

Circulated: JUN 20 1983

Recirculated: _____

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2101

PENNHURST STATE SCHOOL & 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

[June ——, 1983]

JUSTICE STEVENS, dissenting.

The question whether a federal court may award injunctive relief against state officials on the basis of state law has been answered by this Court many times in the past. The affirmative answer to that question is supported by sound reasons of judicial administration, by the doctrines of *stare decisis* and law of the case, and by a correct understanding of the doctrine of sovereign immunity. A negative answer will place additional burdens on the judiciary and on the victims of unlawful conduct by state officials. It will also require unnecessary determinations of constitutional questions, a result inimical to sound principles of judicial restraint. I therefore respectfully dissent.

I

In one of the most respected opinions ever written by a Member of this Court, Justice Brandeis wrote:

> "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:
>
> . . . . .
>
> "The Court will not pass upon a constitutional question

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

3p. 16-18, 23

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 21 '83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–2101

PENNHURST STATE SCHOOL & 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

[June ——, 1983]

JUSTICE STEVENS, dissenting.

The question whether a federal court may award injunctive relief against state officials on the basis of state law has been answered by this Court many times in the past. The affirmative answer to that question is supported by sound reasons of judicial administration, by the doctrines of *stare decisis* and law of the case, and by a correct understanding of the doctrine of sovereign immunity. A negative answer will place additional burdens on the judiciary and on the victims of unlawful conduct by state officials. It will also require unnecessary determinations of constitutional questions, a result inimical to sound principles of judicial restraint. I therefore respectfully dissent.

I

In one of the most respected opinions ever written by a Member of this Court, Justice Brandeis wrote:

> "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:
>
> . . . . .
>
> "The Court will not pass upon a constitutional question

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 29, 1983

Re: 81-2101 -- Pennhurst State School & Hospital
v. Halderman

Dear Chief:

May I respectfully suggest that the reargument of this case be limited to the Eleventh Amendment issue.

Federal-state comity is a prudential doctrine that should not even be considered unless the circumstances are appropriate. A brief recitation of the history of this case makes clear how inappropriate it would be to vacate the judgment below on comity grounds. This case was filed in 1974. It proceeded through a 32-day trial in District Court (April to June 1977), a decision on the merits (December 1977), hearings on relief and entry of an injunction (March 1978), argument before a panel of the Court of Appeals for the Third Circuit (January 1979), reargument before the Court of Appeals en banc (September 1979), a decision by the Court of Appeals en banc (December 1979), remand proceedings before the District Court resulting in amended judgments (April and May 1980), a writ of certiorari (June 1980), two hours of oral argument before this Court (December 1980), and this Court's decision remanding to the Court of Appeals (April 1981). At each stage the state law claims were fully briefed and argued on the merits, and this Court specifically directed the Court of Appeals to reconsider its construction of the state statute. It was only after all of these proceedings that, for the first time, petitioners raised the comity question. It would be a disservice to the orderly administration of justice to ask for reargument on this issue, and to send respondents to state court to start all over again on their state law contentions.

It is also clear that reargument should not be ordered with regard to the District Court's use of masters. The Office of the Special Master has been abolished. In an

order issued August 31, 1982, the District Court ordered that the Special Master's functions be phased out and that he cease operations completely by December 31, 1982. It would be impracticable and unfair to attempt to recoup the funds that have been spent upon the Special Master; after all, at the invitation of the District Court he devoted considerable time and energy to this case. Though the case may not technically be moot, it is clear to me that there is not enough of a live controversy for us to decide the circumstances under which the use of masters is appropriate.

Petitioners point out that the Hearing Master's position has not been terminated, but the propriety of appointing the Hearing Master is not before us on this petition for certiorari. The position was created by the District Court's order of April 24, 1980, during the brief period between the issuance of the Court of Appeals' mandate and our decision to grant certiorari in No. 79-1404. The petitions for certiorari filed in May 1980 did not encompass the April 24 order creating the Hearing Master, and neither the petitioner state officials nor the petitioner county officials filed notices of appeal from that order. Petitioner Pennhurst Parents-Staff Association did take an appeal to the Third Circuit, but that appeal was dismissed by the consent of all parties on July 25, 1980. Therefore the propriety of appointing the Hearing Master was never even placed before the Court of Appeals. Federal Rule of Appellate Procedure 3(a), 3(c). In its most recent decision, the Court of Appeals majority did not consider the Hearing Master position. The issue certainly is not before us now.

Respectfully,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 30, 1983

Re: 81-2101 - Pennhurst State School and Hospital v. Halderman

Dear Chief:

Although my original preference was to limit the argument to the Eleventh Amendment issue, as long as there appears to be a consensus to exclude the question concerning the Master, I will not dissent from an order which includes the comity issue. In other words, I am willing to go along with your proposal.

Respectfully,

John

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 18, 1983

No. 81-2101 Pennhurst State School & Hospital v. Halderman

Dear Lewis,

Please join me.

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 30, 1983

No. 81-2101 Pennhurst State School & Hospital v. Halderman

Dear Chief,

I would prefer to have the reargument cover the comity issue as well as the Eleventh Amendment issue.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference