

# The Burger Court Opinion Writing Database

## *Perry Education Association v. Perry Local Educators' Association*

460 U.S. 37 (1983)

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

October 15, 1982

RE: 81-896 - Perry Education Assn. v. Perry Local  
Education Assn.

MEMORANDUM TO THE CONFERENCE:

I have concluded to vote to reverse in this close case.

Regards,

WRB

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Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

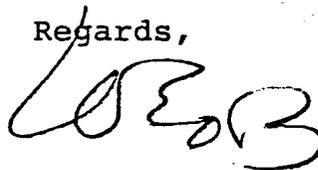
January 13, 1983

Re: no. 81-896, Perry Educ. Assn. v. Perry Local Educ. Assn.

Dear Byron:

This case has given me considerable trouble. I am working on some thoughts which may emerge as a concurring opinion. I am sorry to "hold you up" but I will give it priority now that the lines have formed.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 4, 1983

Re: No. 81-896 - Perry Education Assn. v. Perry Local  
Education Association

Dear Byron:

I join.

Regards,

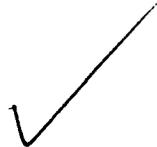


Justice White

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



CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 18, 1982

RE: No. 81-896 Perry Education Assn. v. Perry Local  
Education Assn.

MEMORANDUM TO: Justice Marshall  
Justice Powell  
Justice Stevens

We four are in dissent in the above. I'll be glad  
to try my hand at the dissent.

W.J.B.Jr.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1982

RE: No. 81-896 Perry Education Assn. v. Perry Local  
Education Assn., et al.

Dear Byron:

I'll be circulating a dissent in the above in  
due course.

Sincerely,



Justice White

Copies to the Conference

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

From: **Justice Brennan**

Circulated: JAN 1 1983

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

W  
T. Brennan  
1/1

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-896

PERRY EDUCATION ASSOCIATION, APPELLANT *v.*  
PERRY LOCAL EDUCATION ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

[January —, 1983]

JUSTICE BRENNAN, dissenting.

The Court today holds that an incumbent teachers' union may negotiate a collective bargaining agreement with a school board that grants the incumbent access to teachers' mailboxes and to the interschool mail system and denies such access to a rival union. Because the exclusive access provision in the collective bargaining agreement amounts to viewpoint discrimination that infringes the respondents' First Amendment rights and fails to advance any substantial state interest, I dissent.<sup>1</sup>

I

The Court properly acknowledges that teachers have protected First Amendment rights within the school context. See *Tinker v. Des Moines Independent Community School District*, 393 U. S. 503, 506 (1969). In particular, we have held that teachers may not be "compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work. . . ." *Pickering v. Board of Education*, 391 U. S. 563, 568 (1968). See also *Mount Healthy City Board of Education v.*

<sup>1</sup> I agree with the Court's conclusion that the appeal should be dismissed for want of appellate jurisdiction. See *ante*, at —.

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Changes at 10, 11, 15, 16, 17

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

From: Justice Brennan

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-896

PERRY EDUCATION ASSOCIATION, APPELLANT *v.*  
PERRY LOCAL EDUCATION ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

[January —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

The Court today holds that an incumbent teachers' union may negotiate a collective bargaining agreement with a school board that grants the incumbent access to teachers' mailboxes and to the interschool mail system and denies such access to a rival union. Because the exclusive access provision in the collective bargaining agreement amounts to viewpoint discrimination that infringes the respondents' First Amendment rights and fails to advance any substantial state interest, I dissent.<sup>1</sup>

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<sup>1</sup> I agree with the Court's conclusion that the appeal should be dismissed for want of appellate jurisdiction. See *ante*, at —.

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STYLISTIC CHANGES

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

From: Justice Brennan

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-896

PERRY EDUCATION ASSOCIATION, APPELLANT *v.*  
PERRY LOCAL EDUCATION ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

[January —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

The Court today holds that an incumbent teachers' union may negotiate a collective bargaining agreement with a school board that grants the incumbent access to teachers' mailboxes and to the interschool mail system and denies such access to a rival union. Because the exclusive access provision in the collective bargaining agreement amounts to viewpoint discrimination that infringes the respondents' First Amendment rights and fails to advance any substantial state interest, I dissent.<sup>1</sup>

### I

The Court properly acknowledges that teachers have protected First Amendment rights within the school context. See *Tinker v. Des Moines Independent Community School District*, 393 U. S. 503, 506 (1969). In particular, we have held that teachers may not be "compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work. . . ." *Pickering v. Board of Education*, 391 U. S. 563, 568

<sup>1</sup> I agree with the Court's conclusion that the appeal should be dismissed for want of appellate jurisdiction. See *ante*, at \_\_\_\_.

STYLISTIC CHANGES

+ p. 17

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

From: Justice Brennan

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-896

PERRY EDUCATION ASSOCIATION, APPELLANT *v.*  
PERRY LOCAL EDUCATION ASSOCIATION, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE STEVENS join, dissenting.

The Court today holds that an incumbent teachers' union may negotiate a collective bargaining agreement with a school board that grants the incumbent access to teachers' mailboxes and to the interschool mail system and denies such access to a rival union. Because the exclusive access provision in the collective bargaining agreement amounts to viewpoint discrimination that infringes the respondents' First Amendment rights and fails to advance any substantial state interest, I dissent.<sup>1</sup>

### I

The Court properly acknowledges that teachers have protected First Amendment rights within the school context. See *Tinker v. Des Moines Independent Community School District*, 393 U. S. 503, 506 (1969). In particular, we have held that teachers may not be "compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work. . . ." *Pickering v. Board of Education*, 391 U. S. 563, 568

<sup>1</sup> I agree with the Court's conclusion that the appeal should be dismissed for want of appellate jurisdiction. See *ante*, at —.

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

From: **Justice White**  
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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-896

**PERRY EDUCATION ASSN., APPELLANT v. PERRY  
LOCAL EDUCATION ASSN., ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

[November —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

Perry Education Association is the duly elected exclusive bargaining representative for the teachers of the Metropolitan School District of Perry Township, Indiana. A collective bargaining agreement with the Board of Education provided that Perry Education Association, but no other union, would have access to the interschool mail system and teacher mailboxes in the Perry Township schools. The issue in this case is whether the denial of similar access to the Perry Local Education Association, a rival teacher group, violates the First and Fourteenth Amendments.

I

The Metropolitan School District of Perry Township, Indiana, operates a public school system of thirteen separate schools. Each school building contains a set of mailboxes for the teachers. Interschool delivery by school employees permits messages to be delivered rapidly to teachers in the district.<sup>1</sup> The primary function of this internal mail system is to

<sup>1</sup>The United States Postal Service, in a submission as amicus curiae, suggests that the interschool delivery of material to teachers at various schools in the district violates the Private Express statutes, 18 U. S. C. §§ 1693-1699 (1976) and 39 U. S. C. §§ 601-606 (1976), which generally pro-

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

From: **Justice White**

pp. 11-14; stylistic changes  
throughout; footnotes renumbered

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

Recirculated: JAN 12 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-896

PERRY EDUCATION ASSN., APPELLANT *v.* PERRY  
LOCAL EDUCATORS' ASSN., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

[January —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

Perry Education Association is the duly elected exclusive bargaining representative for the teachers of the Metropolitan School District of Perry Township, Indiana. A collective bargaining agreement with the Board of Education provided that Perry Education Association, but no other union, would have access to the interschool mail system and teacher mailboxes in the Perry Township schools. The issue in this case is whether the denial of similar access to the Perry Local Educators' Association, a rival teacher group, violates the First and Fourteenth Amendments.

### I

The Metropolitan School District of Perry Township, Indiana, operates a public school system of thirteen separate schools. Each school building contains a set of mailboxes for the teachers. Interschool delivery by school employees permits messages to be delivered rapidly to teachers in the district.<sup>1</sup> The primary function of this internal mail system is to

<sup>1</sup>The United States Postal Service, in a submission as *amicus curiae*, suggests that the interschool delivery of material to teachers at various schools in the district violates the Private Express statutes, 18 U. S. C. §§ 1693-1699 (1976) and 39 U. S. C. §§ 601-606 (1976), which generally pro-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1982

Re: No. 81-896 - PERRY EDUCATION ASSN. V. PERRY LOCAL  
EDUCATION ASSN.

---

Dear Byron:

I await the dissent.

Sincerely,

  
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 7, 1983

Re: No. 81-896 - Perry Education Association v.  
Perry Local Education Association

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 29, 1980

Re: No. 81-896 - Perry Education Association  
v. Perry Local Education Association

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 12, 1982

81-896 Perry Education Assn. v. Perry Local Education Assn.

Dear Byron:

I will await the dissent in the above case.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 6, 1983

81-896 Perry Education Association

Dear Bill:

Please add my name to your dissenting opinion.

Sincerely,

LFP

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 11, 1982

Re: No. 81-896 Perry Education Assn. v. Perry  
Local Education Assn.

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 12, 1982

Re: 81-896 - Perry Education Assn. v.  
Perry Local Education Assn.

Dear Byron:

I shall await the dissent.

Respectfully,



Justice White

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 13, 1983

Re: 81-896 - Perry Education Assn.  
v. Perry Local Educators' Assn.

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 12, 1982

Re: No. 81-896 Perry Education Assn. v. Perry Local  
Education Assn., et al.

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference