

# The Burger Court Opinion Writing Database

## *Allen v. Wright*

468 U.S. 737 (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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

May 30, 1984

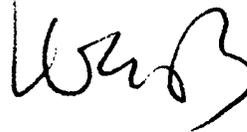
'84 MAY 30 P4:08

Re: 81-757, Allen v. Wright  
81-970, Regan v. Wright

Dear Sandra:

I join - even unto the 27th page!

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 5, 1984

No. 81-757) Allen v. Wright  
          )  
No. 81-970) Regan v. Wright

Dear John,

You and I were in dissent in the  
above. I'll be happy to undertake the  
dissent.

Sincerely,



Justice Stevens

1st draft

No. 81-757

Allen v. Wright

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

From: Justice Brennan

No. 81-970

Regan v. Wright

Circulated: 6/26/84

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

On Writs of Certiorari to the United States Court of Appeals  
for the District of Columbia

JUSTICE BRENNAN, dissenting.

Once again, the Court "uses 'standing to slam the courthouse door against plaintiffs who are entitled to full consideration of their claims on the merits.'" Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 490 (1982) (BRENNAN, J., dissenting) (quoting Barlow v. Collins, 397 U.S. 159, 178 (1970) (BRENNAN, J., concurring in the result and dissenting)). And once again, the Court does so by "wax[ing] eloquent" on considerations that provide little justification for the decision at hand. See 454 U.S., at 491. This time, however, the Court focuses on "the idea of separation of powers," ante, at 11, 13, 21, 22, as if the mere incantation of that phrase provides an obvious solution to the difficult questions presented by these cases.

One could hardly dispute the proposition that Article III of the Constitution, by limiting the judicial power to "cases" or "controversies," embodies the notion that each branch of our



Changes 3, 6, 10, 11

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

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 29 AIO:37

From: Justice Brennan

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

Recirculated: 6/29/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-757 AND 81-970

81-757 W. WAYNE ALLEN, PETITIONER  
v.  
INEZ WRIGHT, ETC., ET AL.

81-970 DONALD T. REGAN, SECRETARY OF THE  
TREASURY, ET AL., PETITIONER  
v.  
INEZ WRIGHT ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[July —, 1984]

JUSTICE BRENNAN, dissenting.

Once again, the Court "uses 'standing to slam the court-  
house door against plaintiffs who are entitled to full consider-  
ation of their claims on the merits.'" *Valley Forge Christian  
College v. Americans United for Separation of Church and  
State, Inc.*, 454 U. S. 464, 490 (1982) (BRENNAN, J., dissent-  
ing) (quoting *Barlow v. Collins*, 397 U. S. 159, 178 (1970)  
(BRENNAN, J., concurring in the result and dissenting)).  
And once again, the Court does so by "wax[ing] eloquent" on  
considerations that provide little justification for the decision  
at hand. See 454 U. S., at 491. This time, however, the  
Court focuses on "the idea of separation of powers," *ante*, at  
12, 13, 21, 23, as if the mere incantation of that phrase pro-  
vides an obvious solution to the difficult questions presented  
by these cases.

One could hardly dispute the proposition that Article III of  
the Constitution, by limiting the judicial power to "cases" or  
"controversies," embodies the notion that each branch of our  
National Government must confine its actions to those that

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 10, 1984

Re: 81-757 - Allen v. Wright  
81-970 - Regan v. Wright

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Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 11, 1984

Re: 81-757 - Allen v. Wright  
81-970 - Regan v. Wright

Dear Sandra:

Please show me as "not participating  
in this one".

Sincerely,

*J.M.*

T.M.

Justice O'Connor

cc: The Conference

*to m*  
*On April 11, 1984 I sent a note*

*11/*

*J.M.*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 27, 1984

Re: No. 81-757-Allen v. Wright  
No. 81-970-Regan v. Wright

Dear Sandra:

On April 11, 1984, I sent a note to "Please show me as 'not participating in this one'".

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 13, 1984

Re: No. 81-757) - Allen v. Wright  
No. 81-970) - Regan v. Wright

Dear Sandra:

For the moment, I shall wait to see if there are any other writings for these cases.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

July 2, 1984

Re: No. 81-757) Allen v. Wright  
No. 81-970) Regan v. Wright

Dear John:

Please join me in your dissent in this case.

Sincerely,

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

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 10, 1984

81-757 Allen v. Wright  
81-970 Regan v. Wright

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 10, 1984

Re: No. 81-757) Allen v. Wright  
81-970) Regan v. Wright

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 10, 1984

Re: 81-757 - Allen v. Wright  
81-970 - Regan v. Wright

Dear Sandra:

Although I find the first seventeen pages of your opinion persuasive and also have serious reservations about the plaintiff's standing to represent a nationwide class, I am still not sure that we can discount entirely the possibility that injury comparable to that involved in Coit v. Green might be established at trial. In other words, if we resolve all doubts in construing the complaint in favor of the plaintiff, I am still inclined to think there is standing. For the time being, I shall therefore wait to see what else may be written in this case.

Respectfully,



Justice O'Connor

Copies to the Conference

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

No. 81-757--Allen v. Wright

No. 81-970--Reagan v. Wright

From: Justice Stevens

Circulated: JUN 28 1984

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

JUSTICE STEVENS, dissenting.

Three propositions are clear to me: (1) respondents have adequately alleged "injury in fact"; (2) their injury is fairly traceable to the conduct that they claim to be unlawful; and (3) the "separation of powers" principle does not create a jurisdictional obstacle to the consideration of the merits of their claim.

I

Respondents, the parents of black school children, have alleged that their children are unable to attend fully desegregated schools because large numbers of white children in the areas in which respondents reside attend private schools which do not admit minority children. The Court, JUSTICE BRENNAN, and I all agree that this is an adequate allegation of "injury in fact." The Court is quite correct when it writes:

"The injury they identify--their children's diminished ability to receive an education in a racially integrated school--is, beyond any doubt, not only judicially cognizable but, as shown by cases from Brown v. Board of Education, 347 U.S. 483 (1954), to Bob Jones University v. United States, 461 U.S. \_\_\_\_ (1983), one of the most serious injuries recognized in our legal system." Ante, at 18.

This kind of injury may be actionable whether it is caused by the exclusion of black children from public schools or by an official



To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

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JUST

'84 APR -2 APR 15

From: Justice O'Connor

Circulated: 4-7-84

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-757 AND 81-970

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v.  
INEZ WRIGHT, ETC., ET AL.

81-970 DONALD T. REGAN, SECRETARY OF THE  
TREASURY, ET AL., PETITIONER  
v.  
INEZ WRIGHT ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

Parents of black public school children allege in this nation-wide class action that the Internal Revenue Service (IRS) has not adopted sufficient standards and procedures to fulfill its obligation to deny tax-exempt status to racially discriminatory private schools. They assert that the IRS thereby harms them directly and interferes with the ability of their children to receive an education in desegregated public schools. The issue before us is whether plaintiffs have standing to bring this suit. We hold that they do not.

I

The Internal Revenue Service denies tax-exempt status under § 501(a) and (c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(a) and (c)(3)—and hence eligibility to receive charitable contributions deductible from income taxes under § 170(a)(1) and (c)(2) of the Code, 26 U. S. C. § 170(a)(1) and (c)(2)—to racially discriminatory private schools. Rev. Rul.





