

The Burger Court Opinion Writing Database

Migra v. Warren City School District Board of Education

465 U.S. 75 (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

October 17, 1983

Re: No. 82-738 Migra v. Warren City School District

Dear Harry:

My assignment was based, in part, on the ancient rule of "the least persuaded," and the need periodically for the "good of the soul," and what Judge Hutcheson called "intellectual discipline."

If there is a candidate for a "trade," I concur.

Regards,

WRB

Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

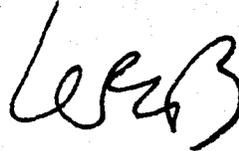
January 19, 1984

Re: 82-738 Migra v. Warren City Board of Education

Dear Harry:

I join. I will also join Byron's concurrence.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 17, 1983

No. 82-738

Migra v. Warren City School
District Board of Education

Dear John and Sandra,

We three voted to vacate in the
above. John, would you mind taking on
the dissent to that effect?

Sincerely,



Justice Stevens

Justice O'Connor

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 20, 1983

No. 82-738

Migra v. Warren City School
District Board of Education, et al.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

December 16, 1983

'83 DEC 16 P12:43

Re: 82-738 - Migra v. Warren City
School District Board of Education

Dear Harry,

I shall be writing separately in this case and will express the views stated in conference: that while 28 U.S.C. §1738 requires a federal court to give at least as much preclusive effect to a state court judgment as it would have under state law, it does not prevent a federal court from giving more. Hence, I would affirm.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

January 11, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: No. 82-738 -

Migra v. Warren City School Dt. Bd. of Educ.

*9-11
Justice
B R W's
concern*

Dear Lewis and Bill,

While I had earlier expressed some interest in drafting a separate opinion reflecting the view that a federal court is free to grant greater preclusive effect to a state court judgment than would the courts of the state rendering the judgment, further research on the issue has caused me to reconsider. Several commentators and a few lower courts have treated the issue as if it has never been resolved by this Court. Currie, Res Judicata: The Neglected Defense, 45 U. Chi. L. Rev. 317, 326-27 (1978), Vestal, Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts, 66 Mich. L. Rev. 1723, 1737-38 (1968), C. Wright, Law of Federal Courts, 690-91 (4th ed. 1983); Reimer v. Smith, 663 F.2d 1316, 1325-26 (CA5 1981); Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1243 & n. 46 (CA 5 1981). However, in Union & Planters' Bank v. Memphis, 189 U.S. 71, 75 (1903), this Court held that a federal court "can accord [a state judgment] no greater efficacy" than would the judgment-rendering state. That holding has been adhered to on at least three occasions since that time. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 7-8 (1940); Wright v. Georgia R.R. & Banking Co., 216 U.S. 420, 427 (1910); City of Covington v. First National Bank, 198 U.S. 100 (1905). The Court has also indicated that the states are bound by a similar rule under the full faith and credit clause. Public Works v. Columbia College, 17 Wall. 521, 528.

Although I doubt that the holding of these cases is necessary to achieve the purpose of the statute--and surely the cases articulated none--the issue is one of statutory construction, and I am not inclined in this case to propose that these cases be overruled unless either of you think there is some chance that the votes to do so would be there. Perhaps a concurrence, however, would stimulate some interest in amending the statute.

Sincerely yours,

Byron

Justice Powell

Justice Rehnquist

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

From: Justice White

Circulated: 1/12/84

Recirculated: _____

82-738 - Migra v. Warren City School Dt. Bd. of Educ.

JUSTICE WHITE, concurring.

In Union & Planters' Bank v. Memphis, 189 U.S. 71, 75 (1903), this Court held that a federal court "can accord [a state judgment] no greater efficacy" than would the judgment-rendering state. That holding has been adhered to on at least three occasions since that time. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 7-8 (1940); Wright v. Georgia R.R. & Banking Co., 216 U.S. 420, 427 (1910); City of Covington v. First National Bank, 198 U.S. 100, 107-109 (1905). The Court has also indicated that the states are bound by a similar rule under the full faith and credit clause. Public Works v. Columbia College, 17 Wall. 521, 529 (1873). The Court is thus justified in this

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

From: **Justice White**

Circulated: _____

Recirculated: JAN 12 1984

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-738

ETHEL D. MIGRA, PETITIONER *v.* WARREN CITY
SCHOOL DISTRICT BOARD OF EDUCATION ET AL.

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

[January —, 1984]

JUSTICE WHITE, concurring.

In *Union & Planters' Bank v. Memphis*, 189 U. S. 71, 75 (1903), this Court held that a federal court "can accord [a state judgment] no greater efficacy" than would the judgment-rendering state. That holding has been adhered to on at least three occasions since that time. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 7-8 (1940); *Wright v. Georgia R. & Banking Co.*, 216 U. S. 420, 427 (1910); *City of Covington v. First National Bank*, 198 U. S. 100, 107-109 (1905). The Court has also indicated that the states are bound by a similar rule under the full faith and credit clause. *Public Works v. Columbia College*, 17 Wall. 521, 529 (1873). The Court is thus justified in this case to rule that preclusion in this case must be determined under state law, even if there would be preclusion under federal standards.

This construction of § 1738 and its predecessors is unfortunate. In terms of the purpose of that section, which is to require federal courts to give effect to state-court judgments, there is no reason to hold that a federal court may not give preclusive effect to a state judgment simply because the judgment would not bar relitigation in the state courts. If the federal courts have developed rules of res judicata and collateral estoppel that prevent relitigation in circumstances that would not be preclusive in state courts, the federal

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

From: Justice White

Circulated: _____

Recirculated: JAN 13 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-738

ETHEL D. MIGRA, PETITIONER *v.* WARREN CITY
SCHOOL DISTRICT BOARD OF EDUCATION ET AL.

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

[January —, 1984]

^with whom JUSTICE
POWELL joins,

JUSTICE WHITE, concurring.

In *Union & Planters' Bank v. Memphis*, 189 U. S. 71, 75 (1903), this Court held that a federal court "can accord [a state judgment] no greater efficacy" than would the judgment-rendering state. That holding has been adhered to on at least three occasions since that time. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 7-8 (1940); *Wright v. Georgia R. & Banking Co.*, 216 U. S. 420, 427 (1910); *City of Covington v. First National Bank*, 198 U. S. 100, 107-109 (1905). The Court has also indicated that the states are bound by a similar rule under the full faith and credit clause. *Public Works v. Columbia College*, 17 Wall. 521, 529 (1873). The Court is thus justified in this case to rule that preclusion in this case must be determined under state law, even if there would be preclusion under federal standards.

This construction of § 1738 and its predecessors is unfortunate. In terms of the purpose of that section, which is to require federal courts to give effect to state-court judgments, there is no reason to hold that a federal court may not give preclusive effect to a state judgment simply because the judgment would not bar relitigation in the state courts. If the federal courts have developed rules of *res judicata* and collateral estoppel that prevent relitigation in circumstances that would not be preclusive in state courts, the federal

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 20, 1983

Re: No. 82-738-Migra v. Warren City School
District Board of Education, et al.

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

October 17, 1983

Reproduced from the Collections of the Manuscript Division, Library of Congress

Dear Chief:

You have assigned to me No. 82-738, Migra v. Warren City School District. You may recall that I was in dissent in both Allen and Kramer, but that I voted to affirm in this case for reasons that I felt distinguished the fact situation from those in Allen and Kramer. Thus, my approach is far narrower than I would expect the Court's approach would be if someone else were writing the opinion.

I therefore wonder whether Migra is properly assigned to me. I had anticipated that I would have to write separately in concurrence.

If you would agree, I would be glad to exchange Migra with someone else who has not yet started on his assignment.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 18, 1983

Re: No. 82-738 - Migra v. Warren City School District

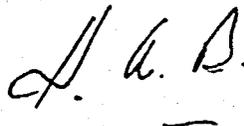
Dear Chief:

This is in response to your note of October 17. I shall retain this case because I do not wish to have a repetition of the misassignment of No. 80 Original precisely a year ago, when I ended up with no case from the first week of the October argument session.

Your notes should show, however, that this is not a case of my being "the least persuaded." My position is firm. I was in the dissent in Allen and in Kramer, wrote the dissents in each of those cases, and felt and still feel that the judgment in each was wrong.

I shall endeavor to put together an opinion that will satisfy what seems to me to be the majority view, and also to satisfy those of us who were in the minority in the earlier cases. This may not work, but then I can transform my writing to a separate concurrence and someone else can take over the task for the majority. All this has nothing whatsoever to do with your references to the "good of the soul" and to what old Joe H. might have called "intellectual discipline."

Sincerely,



The Chief Justice

cc: The Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'83 DEC 16 A9:48

From: Justice Blackmun

Circulated: DEC 16 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-738

ETHEL D. MIGRA, PETITIONER *v.* WARREN CITY
SCHOOL DISTRICT BOARD OF EDUCATION ET AL.

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

[December —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the claim preclusive effect¹ of a state-court judgment in the context of a subsequent suit, under 42 U. S. C. §§ 1983 and 1985, in federal court.

¹The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of "res judicata." See Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4402 (1981). Res judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement, *supra*, § 27. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusion therefore encompasses the law of merger and bar. See *id.*, Introductory Note before § 24.

This Court on more than one occasion has used the term "res judicata" in a narrow sense, so as to exclude issue preclusion or collateral estoppel. See *e. g.*, *Allen v. McCurry*, 449 U. S. 90, 94 (1980); *Brown v. Felsen*, 442 U. S. 127 (1979). When using that formulation, "res judicata" becomes virtually synonymous with "claim preclusion." In order to avoid confusion resulting from the two uses of "res judicata," this opinion utilizes the term "claim preclusion" to refer to the preclusive effect of a judgment in foreclosing relitigation of matters that should have been raised in an earlier

12/16
Join

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

HAB

December 19, 1983

Re: No. 82-738 - Migra v. Warren City School District Board

Dear Sandra:

Thank you for your inquiry of December 16. You will recall that this case was misassigned to me.

Of course, defendants as well as plaintiffs should be concerned by the state law of claim preclusion. At this stage of the writing, however, I chose not to go into that aspect because (1) I was and am fearful that it will chase away at least two votes of Justices who just might join and (2) because the issue really is not before us. I feel that of late we have been tending to pass judgment on issues that are not before us and that have not been argued. This obviously is a developing area of the law, and I would much prefer to take it step by step.

My last comment also has reference to Byron's approach. There was a good bit of sympathy for his view at the conference but, I believe, something less than a majority. I would prefer to refrain at this time from comment on a separate federal rule overlying the state rule of §1738. This again was not specifically before the lower courts and certainly was not briefed by the parties, although there was a good bit of discussion about it at the oral argument. I have available an alternative draft of the opinion which mentions and leaves open the possibility of a federal rule, but it does not go so far as Byron apparently wishes to go in this case. I can fall back on that if necessary, but, for the first circulation, at least, I chose not to use that draft.

In sum, I would prefer, for the time being and until the votes become apparent, to leave the draft about as it is. If, however, you would be more content, I would be willing (1) to change the word "plaintiff" to "litigant" in the third line of the paragraph that begins on page 7, (2) to eliminate the words "a plaintiff's" in the third line on page 9, and (3) to eliminate the last sentence of the paragraph that ends on page 9.

Sincerely,

HAB

Justice O'Connor

Handwritten signature/initials

Reproduced from the Collections of the Manuscript Division, Library of Congress

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: DEC 20 1983

pp. 7+9

HAS

Please join me

JH

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-738

**ETHEL D. MIGRA, PETITIONER v. WARREN CITY
SCHOOL DISTRICT BOARD OF EDUCATION ET AL.**

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

[December —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the claim preclusive effect¹ of a state-court judgment in the context of a subsequent suit, under 42 U. S. C. §§ 1983 and 1985, in federal court.

¹The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of "res judicata." See Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4402 (1981). Res judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement, *supra*, § 27. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusion therefore encompasses the law of merger and bar. See *id.*, Introductory Note before § 24.

This Court on more than one occasion has used the term "res judicata" in a narrow sense, so as to exclude issue preclusion or collateral estoppel. See *e. g.*, *Allen v. McCurry*, 449 U. S. 90, 94 (1980); *Brown v. Felsen*, 442 U. S. 127 (1979). When using that formulation, "res judicata" becomes virtually synonymous with "claim preclusion." In order to avoid confusion resulting from the two uses of "res judicata," this opinion utilizes the term "claim preclusion" to refer to the preclusive effect of a judgment in foreclosing relitigation of matters that should have been raised in an earlier

Wait for
BRW

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

December 21, 1983

'83 DEC 21 A11:23

Re: No. 82-738 - Migra v. Warren City School District
Board of Education

Dear John:

Thank you for your note of December 20. Unless others who have joined the opinion object, I shall be glad to omit the last paragraph of footnote 7 on page 9. The omission will show up on the next draft, which I may defer until the dissent is circulated.

Sincerely,



Justice Stevens

cc: The Conference

STYLISTIC CHANGES

4 p. 9

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE DEPARTMENT

From: Justice Blackmun

'84 JAN 13 A9:53

Circulated: _____

Recirculated: JAN 12 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-738

ETHEL D. MIGRA, PETITIONER *v.* WARREN CITY
SCHOOL DISTRICT BOARD OF EDUCATION ET AL.

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

[January —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case raises issues concerning the claim preclusive effect¹ of a state-court judgment in the context of a subsequent

¹The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of "res judicata." See Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4402 (1981). Res judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement, *supra*, § 27. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusion therefore encompasses the law of merger and bar. See *id.*, Introductory Note before § 24.

This Court on more than one occasion has used the term "res judicata" in a narrow sense, so as to exclude issue preclusion or collateral estoppel. See *e. g.*, *Allen v. McCurry*, 449 U. S. 90, 94 (1980); *Brown v. Felsen*, 442 U. S. 127 (1979). When using that formulation, "res judicata" becomes virtually synonymous with "claim preclusion." In order to avoid confusion resulting from the two uses of "res judicata," this opinion utilizes the term "claim preclusion" to refer to the preclusive effect of a judgment in foreclosing relitigation of matters that should have been raised in an earlier suit. For a helpful explanation of preclusion vocabulary, see *Wright, et al.*, *supra*, § 4402.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

HAI

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 3, 1984

MEMORANDUM TO THE CONFERENCE

Re: Holdings for No. 82-738 - Migra v. Warren City
District Board of Education

One case was held for Migra. It is No. 83-208, Tompkins, et al. v. Gargiul, 704 F.2d 661 (CA2 1983). Respondent was a tenured school teacher in upper New York State. When she went on extended sick leave, she was ordered to undergo certain medical tests. She refused because she was unwilling to be examined by a male doctor. She was placed on leave of absence without pay and unsuccessfully challenged this administratively. She then brought an action against the Board in state court. This was dismissed as time-barred. The Board itself then instituted formal dismissal proceedings against respondent and prevailed. Respondent brought another state court action challenging the dismissal. That suit, too, was not successful.

Respondent brought a third law suit, this time under §1983 in federal court, raising substantive due process claims that were not addressed in the earlier proceedings. That suit had been held in abeyance pending resolution of the state litigation. The trial court granted the Board's motion to dismiss. The Second Circuit reversed. You may recall that in n. 6 on page 7 of the Migra opinion, the Second Circuit was noted as following the minority rule with respect to claim preclusion in a §1983 action. The Second Circuit rule is that an issue not actually litigated on the state side is not barred in the subsequent federal §1983 action even though it might have been litigated in state court. The CA2 applied that rule in this case, and found that state preclusion law did not apply to respondent's substantive due process claims because they had not been raised in state court. That analysis is error under the rule announced in Migra; the court should have applied state preclusion law. It is my view that we should GVR for reconsideration in light of Migra. That will be my vote.

HAB.

Reproduced from the Collections of the Manuscript Division, Library of Congress

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 20, 1983

82-738 Migra v. Warren City School District

Dear Harry:

I will await Byron's separate writing.

As I indicated at Conference, I would like to conclude that a federal rule of preclusion applies, but would like to see how this writes out.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

January 12, 1984

'84 JAN 13 A9:53

82-738 Migra v. Warren City School District

Dear Harry:

Please join me.

I also will join Byron's concurring opinion.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

January 12, 1984

82-738 Migra v. Warren City School District

Dear Harry:

Please join me.

I also will join Byron's concurring opinion.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

cc: Justice White

Please add my name to your concurrence.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'83 DEC 19 P1:03 December 19, 1983

Re: No. 82-738 Migra v. Warren City School District

Dear Harry:

I will await Byron's writing in this case.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 12, 1984

Re: No. 82-738 Migra v. Warren City School District
Board of Education

Dear Harry:

Please join me. Like John, I would prefer to see the last paragraph of footnote 7 on page 9 of the present draft omitted.

Sincerely,



Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 17, 1983

Re: 82-738 - Migra v. Warren City School
District Board of Education

Dear Bill:

Unless it develops that there are five votes to vacate and remand, I will be happy to prepare the dissent.

Respectfully,



Justice Brennan

cc: Justice O'Connor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'83 DEC 21 AM 11:24

December 20, 1983

Re: 82-738 - Migra v. Warren City School
District Board of Education

Dear Harry:

Please join me. It would be all right with me if you decide to omit the last paragraph of footnote 7 on page 9, but that is a question for the author of the opinion to decide.

Respectfully,

A handwritten signature in cursive script, appearing to read "John / J.P.", likely representing Justice John Paul Stevens.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 16, 1983

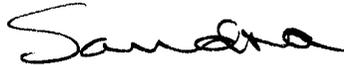
No. 82-738 Migra v. Warren City School District

Dear Harry,

I have read your opinion in this case and am sure I can join it. I would like to raise one question before sending my formal joinder, however.

The opinion, at pages 7 and 9, discusses the preclusive effects of a plaintiff's prior state court litigation. FN 7 discusses your dissent in Allen. Do you think that defendants as well as plaintiffs are bound by state law of claim preclusion? Section 1738 does not limit full faith and credit to plaintiff's actions. Should this be clarified in your view?

Sincerely,



Justice Blackmun

*We have concerned ourselves with this question
+ were in a hurry to decide it.
We too made this point in
order of no case - Allen's pt.
But if you want to, I have no
objection. I will be glad to meet
about it.*

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 19, 1983

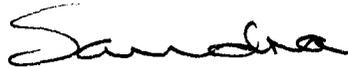
No. 82-738 Migra v. Warren City School District Board

Dear Harry,

I recognize the care you must exercise to keep the Court.

I would be pleased to see the changes suggested in your last paragraph of your letter of December 19 and will join the opinion with those minor modifications.

Sincerely,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 20, 1983

No. 82-738 Migra v. Warren City School
District Board of Education

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS