

The Burger Court Opinion Writing Database

Minnesota State Board for Community Colleges v. Knight

465 U.S. 271 (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

January 31, 1984

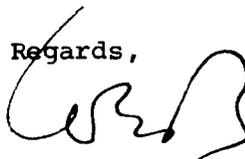
Re: (82-898 - Minnesota State Board for Community Colleges, et al.
(v. Knight, et al.
(
(82-977 - Minnesota Community College Faculty Association, et al.
v. Knight, et al.

Dear Sandra:

At Conference, I voted to DIG or affirm this case and Byron later assigned it to you.

None of the solutions make me completely happy, but on Voltaire's dictum "if all is not well, all is passable," I now conclude to join you.

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.

December 20, 1983

Nos. 82-898 & 82-977

Minnesota State Board for Community
Colleges, et al. v. Knight, et al.,
etc.

Dear Sandra,

I'll await the dissent.

Sincerely,



Justice O'Connor

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: 2/10/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

82-898
MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES, ET AL., APPELLANTS
v.
LEON W. KNIGHT ET AL.

82-977
MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION, ET AL., APPELLANTS
v.
LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[February —, 1984]

JUSTICE BRENNAN, dissenting.

Although I agree with much of JUSTICE STEVENS' dissent, I write separately to explain why, irrespective of other grounds, principles of academic freedom require affirmance of the District Court's holding that the "meet and confer" provisions deprive appellees of their constitutional rights.

It is crucial at the outset to recognize that two related First Amendment interests are at stake here. On the one hand, those faculty members who are barred from participation in "meet and confer" sessions by virtue of their refusal to join MCCFA have a First Amendment right to express their views on important matters of academic governance to college administrators.¹ At the same time, they enjoy a First

¹In this respect, I agree with JUSTICE MARSHALL's suggestion that the First Amendment protects the freedom of "faculty members . . . to present to college administrators their ideas on matters of importance to the mission of the academic community," *ante*, at 2; I disagree, however, with his view that the sporadic and informal opportunities of non-union fac-

100

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1984

Nos. 82-898 & 82-977

Minnesota State Board for Community
Colleges, et al., etc.

Dear John,

Please join me in all but Part II
of your dissent.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 21, 1983

Re: 82-898 - Minnesota State Board for
Community Colleges v. Knight
82-977 - Minnesota Community College
Faculty Ass'n v. Knight

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

82-898

MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES v. KNIGHT

82-977

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION v. KNIGHT

JUSTICE MARSHALL, concurring in the judgment.

I do not agree with the majority's sweeping assertion that no governmental official is ever constitutionally obliged, before making a decision on a matter of public policy, to afford interested citizens an opportunity to present their views. Ante, at 12-14. Nor do I agree with the dissent that the First Amendment always--or even often--requires that governmental decisions "be made in an open marketplace of ideas." Post, at 15, and n. 20. Rather, I think that the constitutional authority of a governmental decisionmaker to choose the persons to whom he

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

From: **Justice Marshall**

Circulated: **FEB 9 - 1984**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES, ET AL., APPELLANTS

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION, ET AL., APPELLANTS

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[February —, 1984]

JUSTICE MARSHALL, concurring in the judgment.

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STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **FEB 16 1984**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES, ET AL., APPELLANTS

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION, ET AL., APPELLANTS

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[February —, 1984]

JUSTICE MARSHALL, concurring in the judgment.

I do not agree with the majority's sweeping assertion that no government official is ever constitutionally obliged, before making a decision on a matter of public policy, to afford interested citizens an opportunity to present their views. *Ante*, at 12-14. Nor do I agree with JUSTICE STEVENS that the First Amendment always—or even often—requires that government decisions be made in “an open marketplace of ideas.” See *post*, at 1-2, 16. Rather, I think that the constitutional authority of a government decisionmaker to choose the persons to whom he will and will not listen prior to making a decision varies with the nature of the decision at issue and the institutional environment in which it must be made. Cf. *Healy v. James*, 408 U. S. 169, 180 (1972) (“First Amendment rights must always be applied ‘in light of the special characteristics of the . . . environment’ in the particular case.”) (quoting *Tinker v. Des Moines Independent School District*, 393 U. S. 503, 506 (1969)). The narrow question

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December 16, 1983

Re: No. 82-898) Minnesota State Board for
Community Colleges v. Knight
No. 82-977) Minnesota Community College
Faculty Association v. Knight

Dear Sandra:

Thank you for running your proposed opinion in these cases "by me" prior to general circulation. I have read the opinion with interest. As you say, this is rather tricky. It deals with a difficult statute in an area full of political overtones in my home State.

I really have nothing to suggest, and I shall join the opinion in its present form. It is a good one and I think you will get a Court. Byron and Bill Rehnquist surely will join you. I feel there is a fair chance that the Chief Justice will come along, despite his equivocation at the time of the conference discussion. Possibly, Thurgood will join.

I am still amused to find myself to the "left" of Judge Heaney. Gerry did little other than labor work on the side of unions in his practice days and here we are saying that he leaned too much the other way in a labor case.

Sincerely,

HAB

Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 19, 1983

Re: No. 82-898) Minnesota State Board for Community
Colleges v. Knight
No. 82-977) Minnesota Community College Faculty
Association v. Knight

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 LEWIS F. POWELL, JR.

December 21, 1983

82-898 Minnesota State Board v. Knight

Dear Sandra:

I'll await John's dissent.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 31, 1984

82-898 & 82-977 Minnesota Bd. for Community Colleges
v. Knight

Dear John:

Please join me in all of your dissent except Part II.

I do not necessarily disagree with Part II. Its rather broad language seems unnecessary to me, and your Part III persuasively identifies the invalid aspect of the Minnesota statute. Your quotation from Mosely ("once a forum is opened up to assembly or speakers by some groups, government may not prohibit others from assembling or speaking..."), and your citations to Widmar and Madison Joint School District, are dispositive in my view.

Sincerely,



Justice Stevens

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 19, 1983

Re: No. 82-898 Minnesota State Board for Community
Colleges v. Knight
82-977 Minnesota Community College Faculty
Association v. Knight

Dear Sandra:

Please join me.

Sincerely,

WM

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1983

Re: 82-898 - Minnesota State Board for
Community Colleges v. Knight
82-977 - Minnesota Community College
Faculty Association v. Knight

Dear Chief:

I shall be happy to undertake the dissent.

Respectfully,



The Chief Justice

cc: Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 20, 1983

Re: 82-898 - Minnesota State Board for
Community Colleges v. Knight
82-977 - Minnesota Community College
Faculty Association v. Knight

Dear Sandra:

I will circulate a dissent as soon as I can.

Respectfully,



Justice O'Connor

Copies to the Conference

120 5
LFP JFS

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

From: **Justice Stevens**

Circulated: JAN 26 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESTOTA STATE BOARD FOR COMMUNITY
COLLEGES ET AL.

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION ET AL.

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[January —, 1984]

JUSTICE STEVENS, dissenting.

The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." Laws enacted by state legislatures are subject to this prohibition. *Gitlow v. New York*, 268 U. S. 652 (1925). The question in this case is whether Minnesota's statute granting unions preferential access to the policymaking deliberations of public agencies, while prohibiting comparable access for others, is such a law.

We need not consider whether executives or legislators have any constitutional obligation to listen to unsolicited advice to decide this case. It is inherent in the republican form of government that high officials may choose—in their own wisdom and at their own peril—to listen to some of their constituents and not to others. But the First Amendment does guarantee an open marketplace for ideas—where divergent points of view can freely compete for the attention of those in power and of those to whom the powerful must account.

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2. 12, 14, 15-16, 20

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

From: Justice Stevens

Circulated: _____

Recirculated: FEB 1 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESTOTA STATE BOARD FOR COMMUNITY
COLLEGES ET AL.

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION ET AL.

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[February —, 1984]

JUSTICE STEVENS, dissenting.

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joined in all
but Part II
by Justice
Powell,

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

From: **Justice Stevens**

Circulated: _____

Recirculated: FEB 6 1984

loc
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 14, 16-18, 22

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES ET AL.

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION ET AL.

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[February —, 1984]

JUSTICE STEVENS, with whom JUSTICE POWELL joins in
all but Part II, dissenting.

The First Amendment provides: "Congress shall make no
law . . . abridging the freedom of speech, or of the
press . . ." Laws enacted by state legislatures are subject
to this prohibition. *Gitlow v. New York*, 268 U. S. 652
(1925). The question in this case is whether Minnesota's
statute granting unions preferential access to the policymak-
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We need not consider whether executives or legislators
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wisdom and at their own peril—to listen to some of their con-
stituents and not to others. But the First Amendment does
guarantee an open marketplace for ideas—where divergent
points of view can freely compete for the attention of those in

82-898

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dec. 14 '82

Dear Harry,

I am about ready to circulate a draft in 82-898 and 82-977, Minnesota State Board for Community Colleges. Holding a court may prove difficult. I would be very grateful if you would "preview" the enclosed draft and let me know if it is within the ballpark as far as you are concerned.

Sincerely,
Sandra

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

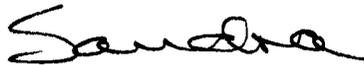
December 16, 1983

Re: No. 82-898) Minnesota State Board for
Community Colleges v. Knight
No. 82-977) Minnesota Community College
Faculty Association v. Knight

Dear Harry,

Thank you very much indeed for looking at the draft in this case. Since you approve, I will now circulate it and hope to keep a Court.

Sincerely,



Justice Blackmun

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

From: **Justice O'Connor**

Circulated: **DEC 19 1983**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY COL-
LEGES, ET AL., APPELLANTS

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY AS-
SOCIATION, ET AL., APPELLANTS

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[January —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The State of Minnesota authorizes its public employees to bargain collectively over terms and conditions of employment. It also requires public employers to engage in official exchanges of views with their professional employees on policy questions relating to employment but outside the scope of mandatory bargaining. If professional employees forming an appropriate bargaining unit have selected an exclusive representative for mandatory bargaining, their employer may exchange views on nonmandatory subjects only with the exclusive representative. The question presented in this case is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees within the bargaining unit who are not members of the exclusive representative and who may disagree with its views. We hold that it does not.

Changes pp. 5-6, 8-11, 17-20

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: 1-28-84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES ET AL.

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION ET AL.

82-977

v.

LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

[January —, 1984]

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

From: **Justice O'Connor**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-898 AND 82-977

MINNESOTA STATE BOARD FOR COMMUNITY
COLLEGES ET AL.

82-898

v.

LEON W. KNIGHT ET AL.

MINNESOTA COMMUNITY COLLEGE FACULTY
ASSOCIATION ET AL.

82-977

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LEON W. KNIGHT ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
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